Ontario

Ministry of the
Attorney
General

Report
of
The Task Force on Legal Aid

PART I

The Hon. Mr. Justice John H. Osler, Chairman

1974

Ministry of the
Attorney
General

Report
of
The Task Force on Legal Aid

PART 1

The Hon. Mr. Justice John H. Osler, Chairman

1974

TABLE OF CONTENTS

Ontario

Task Force on
Legal Aid

416/965-7773

Suite 334
145 Queen St. West
Toronto Ontario
M5H 2N7

November 29th, 1974.

The Honourable Robert Welch, Q.C.
Minister of Justice and Attorney General
for Ontario,
Parliament Buildings,
Queen's Park,
Toronto, Ontario.

Dear Mr. Attorney:

I have the honour to submit the first Report of your Task Force on Legal Aid.

Yours very truly,

John H. Osler,
Chairman.

Toronto, November 29th, 1974.

Ontario

Executive Council

Copy of an Order-in-Council approved by His Honour the Lieutenant Governor, dated the 19th day of December, A.D. 1973.

The Committee of Council have had under consideration the report of the Honourable the Attorney General, dated December 13th, 1973, wherein he states that,

WHEREAS the Ontario Legal Aid Plan has operated for a period of 6 years in times when significant, social and economic developments have been taking place in the Province of Ontario, and

WHEREAS the Provincial and Federal Legislation has created a broad range of legal rights and remedies which are placing an increased demand on legal services, and

WHEREAS at the same time, the cost sharing arrangements for Legal Aid in criminal matters with the Government of Canada, together with the establishment of the Law Foundation, pursuant to the Law Society Amendment Act, 1973, are introducing variations in the method of funding the Legal Aid Plan.

The Honourable the Attorney General therefore recommends that a Task Force on Legal Aid consisting of a Chairman appointed by the Lieutenant Governor in Council and six other Members to be appointed by an Order of the Attorney General of Ontario be established, effective the 2nd day of January, 1974, to review in depth the operation of the Legal Aid Plan in Ontario and determine the parameters of its future direction and development in order to ensure that it has the capacity to meet its objectives in the years ahead.

Without limiting the generality of the foregoing, the Task Force will carry out the following and report to the Attorney General thereon:

(a) To examine and evaluate the effectiveness of the Ontario Legal Aid Plan in the context of the experience gained since its inception;

(b) To ascertain and assess the need for the provision of services under the Legal Aid Plan in low-income urban and rural communities and native population areas;

(c) To examine and evaluate alternative methods for the provision of legal aid services in such communities and areas;

(d) To ascertain and assess the availability of subsidized legal assistance to middle-income groups;

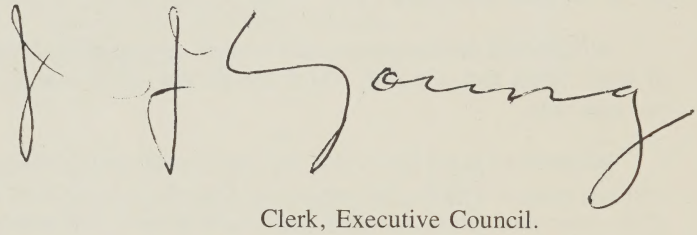
(e) To examine and evaluate the method of funding the Legal Aid Plan, having regard to available resources;

(f) To recommend organizational or operational modifications to the Legal Aid Plan or variations in priorities within the Plan, required to provide legal assistance not presently available under the Plan as aforesaid, having regard to available resources.

The Honourable the Attorney General further recommends that the Honourable John H. Osler, Justice of the Supreme Court of Ontario, be appointed Chairman of the said Task Force on Legal Aid from the effective date above indicated and that he shall have authority to engage such Counsel, Consultants, Researchers and other staff as he deemds proper at the rates of remuneration and reimbursement to be approved by the Management Board of Cabinet.

The Committee of Council concur in the recommendations of the Honourable the Attorney General and advise that the same be acted on.

Certified,



Clerk, Executive Council.

INTRODUCTION

Our concepts of social justice have never remained constant for any appreciable period of time and historically, as our attitudes have changed so too have our views as to legal assistance to the poor.

In Ontario, prior to 1951, most legal aid was performed on an *ad hoc* basis by members of the Bar who have always recognized it as part of their professional responsibility. In civil matters no payment was received for such services and lawyers not only absorbed their loss of fees but also paid the required disbursements out of their own pockets. In criminal matters, while the Attorney-General's Department paid a nominal per diem fee to counsel in capital cases together with the costs of transcripts and related disbursements, in the vast majority of criminal cases no payment of any kind was received by the member of the Bar who acted in defence of an indigent person.

In 1951 Legal Aid in Ontario crystalized into a voluntary plan with the passing of Regulations of The Law Society of Upper Canada. The period that followed had the following characteristics:

(1) the service was entirely voluntary in nature;

(2) no lawyer was entitled to receive any remuneration for services rendered unless the client could afford part payment;

(3) eligibility was based on a schedule of entitlement relating to annual income and the number of dependants but a discretionary "needs" test was also built in;

(4) the Plan covered most civil cases but only indictable criminal matters;

(5) the Plan was administered locally by the county and district law associations; and

(6) a provincial fund was available to pay for most disbursements.

The voluntary plan went into effect throughout most of the province and in the years 1952 to 1963 inclusive legal aid or advice was given in 41,420 civil and 13,465 criminal cases. While the appointment of local lawyers to assist was often *ad hoc* in nature, it is apparent that significant numbers of the public did receive assistance. However, by July 1963, it became obvious that the voluntary plan could not satisfy the then existing need and a Joint Committee on Legal Aid was established to report on the existing plan and make recommendations for the future. Under the chairmanship of W. B. Common, Q.C. this committee submitted a landmark document to the Attorney General and its recommendations were substantially accepted by the Legislature.

The Legal Aid Act of 1966, the structure of which was developed in the Common Report, was in fact the result of the work and dedication of countless lawyers and laymen alike going back over the many years that legal aid had been available in one form or another in this Province. Now that it has been in operation in its present form for some seven years the changing times have again required a review. We dedicate this report to those who preceeded us.

CHAPTER 1

SALIENT FEATURES OF THE PRESENT PLAN WITH COMMENTS

The Legal Aid Plan has been in operation in Ontario for just over seven years. It is often described by its supporters as the best in the world. This claim is by its nature impossible to substantiate, as it is premised on a value judgment; but it may be said that it is the most comprehensive plan in terms of coverage of which we are aware. In addition the per capita expenditure for this service is the highest in Canada and perhaps anywhere, though the Province of Quebec is rapidly overreaching it. As one might expect, much of the structure of the Ontario Plan has been drawn from British experience and many features of both the English and Scottish Legal Aid Plans have been incorporated into it.

The Plan, has by virtue of The Legal Aid Act been established and administered by The Law Society of Upper Canada, subject to the approval of the Minister of Justice and Attorney General. The funds necessary to administer the Plan and pay for its services have been provided in large measure by the Government of Ontario. In the year ended March 31st, 1974 the Provincial Government contribution, including certain administrative costs, was approximately $13,843,000.00. Since January 1st, 1973 the Government of Canada has been contributing to the criminal side of the Plan on a per capita basis and in the year ended March 31st, 1973 that contribution amounted to almost $4,000,000.00. Commencing April 1st, 1974 it has been determined that the interest on all ''mixed'' trust accounts maintained by lawyers with banks or trust companies must be paid quarterly to The Law Foundation incorporated by amendment to The Law Society Act. Seventy-five per cent of the money thus received is to be used for Legal Aid. While it is impossible to make a firm estimate after so brief a period it seems likely that at least $3,000,000.00 per annum can be expected from this source. Assuming these funds had been available last year, the net cost to Ontario would have been $6,265,000.00 and to the Federal Government $3,970,000.00 for a total net cost to the public of $10,843,000.00.

The salient feature of the Plan is that it provides for services by the private Bar of Ontario at no charge or at a reduced charge to those who qualify for such services both by virtue of the type of service required and by their financial position. Eligibility for legal services in criminal as well as civil matters is determined legislatively by the Government of Ontario through the Legislature and administratively by the Law Society. This represents a marked departure from the systems in force in the United Kingdom. Eligibility for assistance in criminal matters is there determined by the courts rather than by the administrators of the Plan and the respective law societies have little or no responsibility for the administration of the Plan on the criminal side. Reliance on the private Bar as the mainstay of the Plan distinguishes it from virtually all Legal Aid arrangements in the United States.

The Plan has been administered in Ontario through a rather elaborate system of administrative officers and offices situated in some 46 areas throughout the province, corresponding for all practical purposes to the counties and districts of the province. Because of its size and the fact that the major fraction of the population of Ontario resides within its boundaries, the Judicial District of York, including the Municipality of Metropolitan Toronto, must be dealt with separately,

although in theory the structure of the York apparatus is much the same as that of the other areas.

In each area the four institutions of significance are the Area Director, the local Bar, the Area Committee and Duty Counsel. The Area Director is with few exceptions a lawyer practicing in the area who devotes a portion of his time to the work of the Legal Aid Plan and who is paid a salary in proportion to the time devoted and the number of persons served. These retainers range from approximately $5,000.00 per annum to a little over $12,000.00 and are presumably now in the process of upward revision. These figures, of course, do not include the salary of the full time Area Director of York.

APPLICATIONS AND ASSESSMENT

The Area Director is responsible for the operation of the Plan within his area. In the typical case, he establishes an office within the area and staffs it with a full or part time secretary. Applications for Legal Aid are received from persons who are desirous of assistance and are passed upon by the Area Director so far as eligibility for the type of service requested is concerned. Hours during which the Area offices are open vary from place to place but generally speaking are confined to normal business hours (9 a.m. to 5 p.m.) or some hours during such a period of one or more days each week ranging up to a maximum of five, with occasional Saturday and evening service in a few localities.

Financial eligibility is initially determined by a representative of a special division of the Department of Community and Social Services. An office of this department may or may not be situate near that of the Area Director. In some areas the offices are not even within the same communities. It is usually necessary for an applicant to take his application to the C.S.S. office and there to submit to an interview in depth regarding his financial situation. In some C.S.S. offices the interviewing officer has power to make the final recommendation. In others it is necessary to send the matter on to a regional officer for decision.

The application then returns to the Area Director endorsed with the recommendation of the C.S.S. Department and the applicant is advised whether or not his application has been granted, and, if granted, whether he must pay any part of the cost. The decision is that of the Area Director who is not bound to follow the recommendation of the C.S.S. representative although at the present time the policy of the Legal Aid Plan is to require an Area Director to report in writing to the office of the Provincial Director of Legal Aid his reasons for declining the recommendation.

The successful applicant is then advised that he may have the services of a lawyer of his choice for the particular problem with respect to which he has been granted a certificate. Should he have no acquaintance with lawyers or no knowledge of any specialization of the Bar that may have occurred within his area, he is shown a list of lawyers who have indicated their willingness to participate in Legal Aid work and told to make his selection from that list. The applicant must then make his own arrangements for an appointment with the lawyer of his choice. The matter then proceeds on the usual solicitor and client basis, subject to the requirement that in civil matters the solicitor must take no substantial step without furnishing to the Area Director an opinion "that it is reasonable under all the

circumstances for him to commence, defend or continue the proceeding'' and the Area Director has subsequently authorized him to proceed.

Skillful and dedicated persons serving as Area Directors in several areas have developed streamlined procedures for shortening the time for obtaining a certificate. In some communities the Area Director has persuaded a large proportion of the local Bar to keep application forms on hand and to assist applicants in completing them. When matters are urgent such lawyers can be informally authorized by telephone to proceed with what is required without waiting for formal approval or for completion of an assessment. Some Area Directors make extended ''discretionary'' use of Section 16(2) of the Act which permits an Area Director to omit the reference to an assessment officer if the cost of the Legal Aid requested is estimated to be not more than $60.00. On some occasions a solicitor will be authorized to proceed with an urgent matter on a Duty Counsel basis without waiting for the issuance of a certificate. In these and other ways ingenious men and women have succeeded in imparting to the process a degree of flexibility greater than a uninformed perusal of the Act might suggest was possible.

Unless such special efforts are made, however, the normal applicant for assistance in a civil matter is required to take most or all of the following steps before he can receive assistance: interview with the Area Director's secretary to give particulars and to complete application form; interview with the Area Director for review of application and estimate of probable costs; interview with C.S.S. representative regarding financial condition of the applicant, frequently requiring an attendance at a different place on a different day; after a waiting period whose length varies with the community, telephone call to the office of the solicitor selected and subsequently an attendance upon that solicitor for further inquiry as to the merits of the claim; waiting period, long or short while the solicitor delivers opinion to the Area Director; receipt of advice from the solicitor that he is authorized and prepared to proceed. The necessary attendances of course increase if the solicitor first chosen by the applicant is unable or unwilling to act in the matter.

Under normal circumstances in most areas the time required to complete the process is from two to three weeks. In many instances it can be much longer.

On the criminal side, when an applicant for Legal Aid is in custody there may be some saving of time. More will be said about the function played by Duty Counsel but there is a strong likelihood that Duty Counsel will be in court on the first occasion when an accused person in custody is brought before a Provincial Judge, normally within twenty-four hours of his arrest. Ideally, Duty Counsel should be prepared to take an application for Legal Aid and forward it expeditiously to the office of the Area Director. In the majority of cases this is what actually occurs, although in the press of business it is sometimes not possible for Duty Counsel to complete the large number of applications that may be necessary in the course of any one court sitting. In the large centres Duty Counsel generally visit the jail on a periodic basis and, at least in theory, signs and notices are positioned in these institutions bringing to the attention of the inmates the existence of Legal Aid and their possible entitlement to it.

At the assessment stage, matters may again be expedited as in a large number of cases it is unlikely that a person in custody will be able to make a contribution towards the cost of legal service. Nevertheless the procedure is mandatory and,

again in the larger centres, a C.S.S. representative will visit the local jail if required in order to conduct the required interview. Persons accused of crimes who are not in custody proceed in the usual manner to arrange an interview with the Area Director and, if found technically eligible, a subsequent interview with a C.S.S. representative. Confirmation by the Area Director may follow and finally the selection of a lawyer is made and the retainer effected.

As has been pointed out elsewhere, notably in the Ontario Law Reform Commission Report on the Administration of Ontario Courts, the impact of Legal Aid on the courts has been very considerable. The failure of the court administration to keep adequate statistics until very recent years makes it impossible to measure the increase in the volume of cases in absolute terms. Nevertheless it is fair to assume that a large number of matters now find their way into the courts that would in previous times not have done so by reason of the inability of the parties to retain a lawyer and to support the litigation financially. What is apparent, however, is that at least on the criminal side, the certificate granting process is so complicated and prolonged that it produces in the lower courts additional appearances and adjournments and therefore delays in the whole court process and makes expensive demands upon the time of judges, court personnel and witnesses.

CONTROLS OVER LAWYERS

Once a lawyer is selected and agrees to act, the matter proceeds, subject only to certain modest controls, on a straightforward solicitor and client basis, with the decisions of the lawyer being taken in accordance with his duty to give priority to the needs and requirements of his client. The lawyer is subject to three controls established by the Plan. First is the requirement, in civil matters, that before proceeding he must give to the Area Director an opinion in writing as to the reasonableness of proceeding. Second, if any circumstances come to the attention of the lawyer which indicate that his client may not have been entitled or may no longer be entitled to the certificate, the solicitor shall forthwith report this to the Area Director who may in his judgment revoke the certificate or amend it to cover a different or more limited matter than that originally referred. Finally, every legal account must be submitted to the Legal Accounts Officer who has the power and the duty to disallow in whole or in part fees related to steps unnecessary or unreasonable in the circumstances or proceedings unnecessarily prolonged.

It may be said in passing that while the third control mentioned appears theoretically to be one of great strength, it cannot be overlooked that one of the purposes of employing a solicitor is to permit him to bring his professional judgment to bear upon a matter. What proceedings are necessary or reasonable or not unduly prolonged turn largely upon the exercise of that judgment. It can only be in a rare case that such an exercise of judgment can be properly challenged. In practice it may well be that the best and most effective control over the conduct of solicitors lies in the power of an Area Director to remove from the panel of participating solicitors any person who persistently abuses the trust that has been placed in him. In addition, we have frequently been told that in smaller communities the informal pressure of the local bar is a powerful deterrent to abuse.

AREA COMMITTEES

The Area Committee is an institution that in some ways resembles that established under the British plans but in other ways is markedly different. The

Legal Aid Act of Ontario simply provides that The Law Society may appoint a Legal Aid Committee for an area, to be composed and to function as the Regulations prescribe. The Regulations provide that such committee shall consist of not less than five members and that a majority shall be members of The Law Society. Persons who are not members of The Law Society are to be selected as representing the community served by the Area Committee. There is a general power given to the Area Committee to "advise the Area Director with respect to any matter upon which he requests its advice". Apart from this function, the only duties prescribed for the Area Committee under the Act are to hear appeals from the refusal of an Area Director to issue a certificate or from a cancellation of a certificate and to approve or withhold approval of all applications for certificates in appeals or proceedings by way of appeals to the courts and to certain quasi-judicial or administrative tribunals.

It may be stated that in the course of our inquiries we held discussions with the Area Directors and members of Area Committees representing approximately 25 areas within the province and we have had written communications from several more. It is quite apparent that the practices of the Area Directors vary throughout the province; some involve the Area Committee very deeply in the work of the Plan and others rely on it only for its statutory duties with respect to appeals and do not consult it in any other respect.

Similarly the proportion of lay to professional members of Area Committees varies considerably throughout the province. As reported by The Law Society in its Annual Report for 1973, thirteen of the Area Committees in that year had no lay representatives and eleven had only one. In most of the larger centres the lay representation was considerable, ranging from five in Essex County (Windsor) to twelve in York County (Toronto). These figures may be accidentally misleading as in many cases persons shown as "lay" are in fact persons closely associated with the court system such as local registrars, court clerks, and probation officers. While undoubtedly many persons drawn from these occupation have great contributions to make, they are hardly representative of the community at large. In fairness it should be stated that we have been advised that the Legal Aid Committee of The Law Society, and the administrative officers of the Legal Aid Plan, have in recent months been stressing the advantages of additional lay representation and there appears to be a tendency throughout the various areas to increase the proportion of lay members.

DUTY COUNSEL

Duty Counsel is an institution that has been developed by the Legal Aid Plan and by the Area Directors to the point where it is a unique feature of the Plan. The institution was perhaps inspired by the Duty Solicitor who has been present in the Scottish system since the 15th century but the concept has been shaped to meet Ontario needs and experience. The specific duties of Duty Counsel in criminal matters are prescribed in Section 69 of the Regulations:

> "69. Where a person has been taken into custody or summoned and charged with an offence, he may obtain before any appearance to the charge the assistance of Duty Counsel who shall,
>
> (a) advise him of his rights and take such steps as the circumstances require to protect his rights including representing him on an application for

remand or adjournment or for bail or on the entering of a plea of guilty and making representations with respect to sentence where a plea of guilty is entered; and

(b) perform such duties in connection with criminal appeals including the completion of Forms 27 and 28 by the appellant, and including applications for bail with respect thereto as the Director may prescribe.''

As the Act prescribes, panels of Duty Counsel have been established in various areas. Each individual serves for a defined period of time; thus counsel is generally available in every Provincial Court (Criminal Division) to assist accused persons. In York County for example this involves the presence of two Senior Duty Counsel in the Old City Hall each morning plus eight Duty Counsel, all of whom are likely to remain throughout the morning or at least as long as required. While some judges are apt to indicate to Duty Counsel that their presence will not be required during afternoon sessions, normally at least two Duty Counsel remain on duty throughout the afternoon. In addition, eight other courts in the county are similarly manned. Whenever they sit, the Juvenile Courts in Newmarket, Scarborough, Willowdale and Etobicoke are staffed by one Duty Counsel each. The Jarvis Street Provincial Court (Family Division) requires one Senior and two Duty Counsel throughout the week. In other centres the manpower requirements vary in proportion to the number and workload of the court but even the organization of this number of counsel, to say nothing of emergency night Duty Counsel, is no mean undertaking.

Duty Counsel should be available in or adjacent to the courtroom sufficiently in advance of the hour of opening to give all accused the opportunity of speaking to him, letting him explain his function and requesting them to advise him whether or not they wish the assistance of a lawyer, whether they wish to plead guilty, whether they wish to be remanded and whether they wish to make an application for bail or Legal Aid. This is what generally occurs, but we have been told that in some areas Duty Counsel seldom arrive until the moment of opening of court with the result that there is much confusion, delay in proceeding and waste of court time.

We have discussed the institution of Duty Counsel with many Provincial, County and District Court Judges and virtually without exception they agree with the theory of Duty Counsel and find it a useful institution. It seems reasonable that this should be so, from the point of view of the courts. Our system requires that every judge ''lean over backwards'' to protect an accused who is not represented and to explain to him his rights. With Duty Counsel present to perform this function, the work of the court is eased and proceedings flow smoothly and expeditiously. Whether this always indicates the success of the institution from the point of view of the accused is not quite so easy to determine.

Opinions varied amongst the judges and the Crown Attorneys as to the way in which the system was working. Quite obviously success depends almost entirely upon energy, competence and skill on the part of Duty Counsel. These men and women are drawn entirely from the private Bar and exhibit great variety in these attributes.

Approximately half of all Legal Aid work is done by lawyers in their first six years of practice and Duty Counsel are in large part drawn from this section of the

Bar. Obviously, mistakes will be made. Inexperienced counsel may, for example, advise that a plea of guilty be made or that bail be sought pending an application for a Legal Aid certificate in cases which would suggest to an experienced criminal lawyer the advisability of suggesting a remand for medical examination. Zealous young counsel may suggest a full defence when it should be obvious no defence could succeed and that the welfare and dignity of the accused would be better served by a plea of guilty. It is apparent nevertheless that a very large number of accused persons are assisted very substantially by Duty Counsel. To the extent that it is possible to assess the feelings of those persons, it has been made apparent to us that a great majority feel that they have been given worthwhile assistance. Furthermore it must not be forgotten that from the point of view of the administration of justice the institution of Duty Counsel has been the means of introducing most recent graduates to actual court work and to the criminal law in practice. No lawyer of any competence can fail to benefit from such experience no matter what his ultimate field of practice. The introduction of so many more young persons to this field, besides assuring the availability of a service of reasonable quality, has immeasurably strengthened the calibre of the criminal Bar of Ontario and has added to its numbers.

The function of Duty Counsel on the criminal side therefore, is to take all steps by way of advice that might be reasonably expected of a lawyer dealing with a private client upon his first appearance in court. The rule, which is subject to a few exceptions particularly in smaller or remote communities, is that Duty Counsel who first represents an accused person or who takes an application for Legal Aid made by that person may not subsequently represent the same person if a certificate is granted. The most common exception to this rule is when Duty Counsel is a solicitor who has had a previous solicitor-client relationship with the applicant accused. The rule may also be waived when the local Bar is an exceptionally small one.

An obvious problem from the point of view of an accused person results from this rule as well as from the fact that Duty Counsel rotate at frequent intervals. An accused who is remanded or who is granted an adjournment for any reason may find upon his next appearance in court that Duty Counsel is a person who is again a complete stranger to him and if anything whatever requires to be done the accused will have to explain the nature and details of his problem all over again. In that way an accused person may come into contact successively with quite a large number of lawyers, none of whom may be able to do more than administer first aid until a certificate is finally obtained and a lawyer agrees to take on the defence.

This procedure differs radically from that in Scotland where the Duty Solicitor concept originated, in that a person who is remanded in a Scottish court after having been represented by Duty Counsel can expect the same Duty Counsel to reappear if further appearances in court are necessary. In other words, on matters of bail or speaking to sentence or guilty pleas, Duty Counsel becomes seized of the matter and stands by his client until the matter is completed.

On the civil side, the role of Duty Counsel under the present plan is less clear cut and varies depending upon the circumstances, the area and the practice of the Area Director. The applicable Regulation is Regulation 73 which provides: ''An Area Director may designate one or more Duty Counsel to assist him in the operation of his office and in carrying out the provisions of this Regulation in civil matters, in addition to the duties prescribed by Section 69''.

In major centres, particularly in the County of York, the Area Director may call upon Duty Counsel to assist him in the task of interviewing applicants. In those centres where outlying offices or clinics are established or served by the Legal Aid Plan, Duty Counsel (Civil) will attend at appropriate times to represent the Plan: with the consent of the Area Director, he may give advice on the spot when a matter may best be dealt with expeditiously in that way. Again, in the larger centres a variety of institutions require legal assistance for their clients or inmates and Duty Counsel (Civil) is pressed into service for this purpose. As an example, in the County of York arrangements have recently been worked out with appropriate provincial officials for the services of Duty Counsel (Civil) to be made available to the patients and staff of various provincial hospitals within the area. Again, when an application or an inquiry is received from a bedridden or infirm person which seems to be appropriate but which cannot be handled in the regular way because of the inability of the applicant to travel, Duty Counsel (Civil) may be sent to the home of the applicant to obtain the necessary information and, if advisable, to take an application for a certificate for Legal Aid.

Duty Counsel is frequently of assistance in Provincial Court (Family Division). His role there is a varied one, assisting children and parents and assisting marriage partners unfamiliar with the requirements of the law. The present position is a rather unsatisfactory one in that both judges and Area Directors vary considerably in their view of the part to be played by Duty Counsel. In our opinion, elaborated in other parts of our report, Duty Counsel should always be available in these courts and has a most important role to play though it may well require some special training before he can play it properly.

The institution of Duty Counsel will be examined in more detail in connection with certain other portions of our report. However, in summary, it may be said that use has been made of this feature of the Plan to provide immediate contact with the legal system for those concerned with the criminal law, to assist the Area Director in a variety of tasks on the civil side and to provide summary assistance and advice in very many situations that do not fall easily into a stereotyped pattern of service. An interesting and novel example of the use that can be made of this institution is a recently concluded arrangement whereby Duty Counsel will be provided at Toronto International Airport to give on-the-spot advice and assistance to those concerned with the Department of Immigration at that port of entry.

The Annual Report of The Law Society for the year ended March 31st, 1973 indicates that a total of 58,885 certificates were issued, 30,685 for criminal matters and 28,200 for civil matters. During the same period it is indicated that 94,094 persons were assisted by Duty Counsel, 72,742 on the criminal side and 21,352 on the civil side. Leaving aside administrative costs, the average cost for Duty Counsel fees and disbursements for each of the 94,094 persons assisted in this way during that year was $12.30. This compares with an average cost per case of $287.72 for certificates issued on the civil side, $192.65 for certificates issued on the criminal side and $37.93 for advice and assistance given by persons other than Duty Counsel.

We caused studies to be made by Woods, Gordon and Company with respect to the six month period ended September 30th, 1973 with the following results. During that period of time the average cost of a criminal case, including administrative costs was $261.87, of a civil case $343.92, of advice $77.70 and of Duty

Counsel, criminal $14.37 and civil $14.10. Of a total of 74,980 cases handled during the period, 55,079 were looked after by Duty Counsel. The cost of that service represented, on the criminal side, 10 per cent of the entire cost and on the civil side 3 per cent. Without making any qualitative judgment, therefore, it is at least apparent that a very high proportion (74 per cent) of all persons coming into contact with the Plan as presently constituted are served by Duty Counsel at a cost which represents a very small portion, 13 per cent, of the entire cost of the Plan.

COVERAGE UNDER THE PLAN

Coverage under the Plan is broadly determined by three sections, 12, 13 and 14 of the Act. Section 12 provides for those matters with respect to which a certificate shall be issued "to a person otherwise entitled thereto". One might have thought that such language was mandatory, subject only to financial eligibility but in practice this has not proved to be the case. The Regulations, having the force of law, provide for discretion and refusal on the part of the Area Director in many respects, notably if "it appears that . . . no sufficient reason for the granting of the certificate is shown at the particular time". Subject to the above, the certificate is to be issued with respect to proceedings or proposed proceedings in the Supreme, County or District Courts, in a Surrogate Court, in the Exchequer Court of Canada (now the Federal Court) and where the applicant is charged with an indictable offence or is the subject of an application for a sentence of preventive detention, and under the Extradition Act and the Fugitive Offenders Act. The Section provides that an offence that may be tried on indictment or on summary conviction shall be deemed to be one triable on summary conviction until the Crown elects to proceed on indictment. As this election may not be made until the accused has appeared several times in court, some delay and confusion can result because eligibility for Legal Aid may not be known until the case is actually ready for trial.

Section 13 provides that "subject to the discretion of the Area Director, a certificate may be issued" with respect to any summary conviction proceeding under an Act of the Parliament of Canada or of the Legislature of Ontario or under a by-law of a municipality or local board thereof if upon conviction there is likelihood of imprisonment or loss of means of earning a livelihood. While this power is expressed as a discretionary one, Area Directors are advised by the Director of the Plan that the discretion should be exercised in favour of the accused in such cases.

This discretionary power also applies with respect to any proceedings in a Provincial Court (Family Division), in a Small Claims Court, before a quasi-judicial or administrative board or commission otherwise than in an appeal thereto, in bankruptcy subsequent to a receiving order or an authorized assignment or in proceedings for contempt of court. Finally this discretionary power exists "for drawing documents, negotiating settlements or giving legal advice wherever the subject matter or nature thereof is properly or customarily within the scope of the professional barrister and solicitor".

Section 14 provides that with the approval of the Area Legal Aid Committee a certificate may be issued with respect to appeals to the Supreme Court of Canada, the Federal Court, the Court of Appeal for Ontario, a Judge sitting in Court or Chambers, appeals under Part XXIV of the Criminal Code or The Summary Convictions Act, appeals to the Assessment Review Court from an assessment of

the applicant's residence and further from such Court to the Judge of a County or District Court and to the Ontario Municipal Board and appeals to quasi-judicial or administrative boards or commissions and in proceedings by way of Mandamus, Quo Warranto, certiorari, Motions to Quash, Habeas Corpus or Prohibition. Finally a certificate may be issued "in any matter referred by the Area Director to the Area Committee". In all these Section 14 cases "the Area Legal Aid Committee shall consider the application and the supporting material and provide Legal Aid only if in the opinion of the Committee the issue of a certificate is justified".

It has been said with some justice that the present Plan is largely "litigation oriented". The records are quite clear that the Plan makes it possible for any person financially unable, by the standards of the Plan, to afford legal assistance, to obtain such assistance with respect to civil and criminal cases in the higher courts of the Province and of Canada.

Section 13(c) with its provision for assistance at the discretion of the Area Director for a broad range of matters "wherever the subject matter or nature thereof is properly or customarily within the scope of the professional duties of a barrister and solicitor" seems on its face to make the possibility of Legal Aid available for an almost unlimited range of matters as does Section 14(c) with respect to matters referred by the Area Director to the Area Committee. In practice, the "advice and assistance" potential of the Plan does not seem to have been used nearly as extensively as the broad wording of these two provisions would suggest or permit. During the six months ended September 30th, 1973 the number of cases billed to the fund, apart from the work of Duty Counsel, were 9,856 criminal, 8,063 civil and 1,982 legal advice. The Law Society has in recent years taken some steps to increase advice and assistance facilities, such as the Hamilton-Victoria Park Clinic and the projected Peterborough Project, each of which will be mentioned in more detail elsewhere, but these figures make it apparent that the full potential of the Plan with regard to advice and assistance has not been realised.

Critics of the Plan point out that by far the largest proportion of funds and effort are expended on criminal matters and on divorce. Over the six month period mentioned above, criminal cases and the activities of Duty Counsel on the criminal side claimed 51 per cent of the funds expended. Civil cases and the activities of Duty Counsel on the civil side took 47 per cent and legal advice 2 per cent. In passing it may be worth noting that divorce and "other domestic" cases comprised 2,161 and 4,136 cases respectively for a total of 6,297 cases as against 1,766 civil cases of all other types combined.

We should make it plain that we do not share the view that the Plan should look with less favour upon applicants for assistance with respect to divorce proceedings than upon persons with other types of cases involving litigation. While the broader grounds now available for divorce have undoubtedly resulted in a great increase in the number of cases, the right to a divorce under appropriate circumstances is part of the law of the land and the more relaxed attitude now prevailing forms part of the social mores of our time. Subject only to the priorities made necessary by the expense involved, we are of the view that a Legal Aid Plan cannot properly be selective regarding the legal rights it will assist in enforcing. Whether any economies can be effected in the divorce and domestic area is the subject of some comment elsewhere in our report.

Section 15 of the Act provides that a certificate shall not be issued to a person in proceedings wholly or partly in respect of defamation, breach of promise of marriage, loss of service of a female in consequence of rape or seduction, alienation of affections or criminal conversation. Likewise a certificate is not to issue in relator actions, proceedings for recovery of a penalty where the proceedings may be taken by any person and the penalty may be payable to the person taking the proceedings or in proceedings relating to any election. Little or no difficulty or controversy appears to have arisen from these prohibitions with the possible exception of the first, namely proceedings in respect of defamation. It is interesting to note that we received no complaints about these exclusions in the course of our hearings and inquiries except from a scattering of individuals who had been denied certificates respecting actions arising from alleged defamation. On the other hand the Chairman recently heard an expression of opinion in the British House of Lords that the corresponding ban on actions in respect of defamation should be lifted in England because the individual today is said to be more at the mercy of a possibly venal and irresponsible press than at any time in the past.

It should perhaps be emphasized that the refusal of an Area Director to issue a certificate or his action in cancelling a certificate may be appealed to the Area Committee and if such an appeal is allowed the Area Director has a further appeal to the Director of the Plan from the decision of the Area Committee.

Section 18 of the Act provides that where a recipient has agreed to contribute towards the cost of Legal Aid as set out in the certificate, an agreement which may form a condition of issuing the certificate, a lien may be placed against the applicant's land for an amount equal to the amount that he agreed to contribute, to the extent that such amount remains unpaid from time to time. In the course of our inquiries we found that not infrequently a person who otherwise qualified for Legal Aid refused to enter into such an agreement. Something will be said about this provision in the description of our approach to the problems of assessment and eligibility.

PARTICIPATION BY LAWYERS

The Act provides that "panels" may be established of those barristers and solicitors who agree to give Legal Aid, those who agree to provide professional services as Duty Counsel and those who agree to give legal advice. A feature of the Plan which has been much emphasized is that this system gives the applicant freedom of choice with respect to his lawyer. It is stressed that no Area Director may steer an applicant towards a particular lawyer or recommend a lawyer.

The degree to which freedom of choice actually exists varies with such things as the size of the local Bar, the sophistication of the applicant, the type of matter for which assistance is required and the amount of information that can be made available to the applicant about the panel of lawyers.

Participation by the Bar varies greatly from area to area. In some areas it is 100 per cent. In York County it is 38 per cent. The average for the province outside York County is 60 per cent while the overall average throughout the province is 48 per cent.

Attempts have been made by Area Directors and by the Legal Aid Committee to deal with this question of choice. In small communities where participation reaches or approaches 100 per cent, there is probably minimum difficulty as it seems likely that a great proportion of applicants would have some knowledge of at least a few local lawyers. In Metropolitan Toronto the problem is one of large proportions. Our studies indicate that for the nine month period ended March 31st, 1974 there were 2,154 lawyers in York whose names appeared on Legal Aid panels. Of these 1,342 actually participated in the sense that they received payment for services at some time during that period. Even though these lists have been subdivided and names placed on lists that differentiate between passive, that is those available in special circumstances, and active, those who by and large are prepared to take any cases within their realm of practice and are further subdivided into criminal, domestic and other divisions, the freedom of choice offered an applicant is somewhat illusory.

It is said that a major fraction of applicants for Aid in the criminal field have no difficulty in naming a lawyer. In the case of recidivists, this is quite understandable by virtue of their previous experience and their contact with the "prison culture". Even first offenders held in custody pending trial readily acquire knowledge of at least some names through the "prison grapevine". For the true first offender, released on bail or given an appearance notice, however, the problem remains an acute one.

In York and Carleton Counties, in addition to subdividing panel names in the manner indicated, there is available to the applicant the services of the referral office maintained by The Law Society. The service has been operated from an office in Osgoode Hall for four years and from one in Ottawa for some eighteen months. A similar service is to begin shortly in London, Ontario. Some 30 to 40 calls are received by the Toronto office daily and this figure has remained constant over the past year. Roughly half of these calls are from persons who have Legal Aid certificates so that it is apparent that good use is being made of the service by the Area Director for York County and his staff. Records are maintained of lawyers willing to provide Legal Aid (and similar records for those who are prepared only to take clients on a regular basis) in criminal law, civil litigation and six other specialized areas. Callers are asked to describe their problem which is placed in one of the eight categories by the person operating the service and a letter is written to the caller providing the name of the next lawyer on the appropriate list and advising the applicant to telephone that lawyer to arrange an appointment. This is the nearest approach to a solution to the problem in large cities that we have yet encountered. It is unlikely that a better solution will be found until The Law Society has solved the problem of certificating specialists in an official way.

While the referral list solution does give an applicant some guidance as to the experience of the lawyer to whom he is referred, he is nevertheless completely dependent upon the lawyer's own statement that he is qualified by experience to handle particular types of matters. The Law Society's problem of producing eligible names without appearing to steer the applicant is solved but the information available to the applicant is still minimal. Nevertheless the service appeals to us as a valuable one and we are pleased to note that The Law Society has under consideration the possibility of extending it in some form to centres throughout the province as a matter of assistance to the public generally as well as to legally aided persons.

It should be said that The Law Society has approved the creation of new lists which will show with respect to each name the number of years the lawyer has been in practice, the proportion of his time devoted to various areas of practice, the number of persons in the firm and the address. This will make it possible for applicants to obtain considerably more information about the lawyers available and hence will enable them to make a more realistic choice. This change, however, requires some amendment to the Act and to the Regulations and is one of those being held in abeyance pending this report. We think it should be encouraged.

STUDENT LEGAL AID

In addition to the panels already described, the Act provides that student legal aid societies may be established in accordance with the Regulations. The Regulations provide that the initiative should be taken by "a dean" who shall have control and supervision of the student legal aid society of his law course upon approval of such society by the Legal Aid Committee. The Regulations further provide that an Area Director may arrange with a student legal aid society for assistance to Duty Counsel and panel solicitors in rendering Legal Aid services. Where for other than financial reasons a person has been refused a Legal Aid certificate in a matter coming within the discretion of the Area Director (Section 13), the Director may refer such person to a student legal aid society. Similar arrangements may be made with respect to articled students who, with the approval of their principals, may represent and appear on behalf of persons who have been referred to them by an Area Director. In the case of both students attending law school and articled students there is a proviso that they must have the consent of the person concerned and they must be entitled in law so to appear.

In practice, every law school in Ontario has established a student legal aid society and some of these are highly developed. Some of our most interesting and useful submissions came from those societies and it is apparent that in most cases important and worthwhile service is being rendered both to members of the university communities and to the public at large under arrangements worked out between the respective deans and the Legal Aid Committee. More will be said about student participation in another place.

Mention has been made of the Hamilton Victoria Park Project developed by the Legal Aid Committee and by The Law Society of Upper Canada. It should also be stated before leaving the subject of student participation that in Toronto Parkdale Community Legal Services is manned by approximately three fully qualified solicitors and, under their supervision and in close liaison with the participating Bar, by some 20 undergraduate law students under arrangments worked out by The Law Society. Each of these operations represents an experiment in the clinic mode of delivery of legal services developed by or sanctioned by the Plan.

CLASS ACTIONS AND GROUPS

Before leaving the description of the present Plan something should be said about Regulation 39 which directs an Area Director to refuse certain types of applications and permits him to refuse certificates in certain other cases. If it appears that the applicant requests aid in a matter in which he is concerned in a representative, fiduciary or official capacity and the cost can be paid out of any

property or fund which is sufficient, if the applicant is entitled to and has reasonable expectations of financial or other aid, if the Legal Aid applied for is frivolous, vexatious, an abuse of the process of the court or an abuse of the facilities provided by the Act, if the relief sought can only bring the applicant the same benefit that would accrue to him as a member of the public or some part thereof, if the relief sought, if obtained, is not enforceable in law, if the applicant has failed without reasonable justification in any obligation to The Law Society with respect to Legal Aid or if the professional services sought are available to the applicant without Legal Aid the application shall be refused.

An application may be refused if the applicant is one of a number of persons having the same interest under such circumstances that one or more may sue or defend on behalf of or for the benefit of all, if the applicant has the right to be joined in one action as plaintiff with one or more other persons having the same right to relief by reason of there being a common question of law or fact to be determined, if the application is for aid for which a previous certificate has been issued with respect to the same action or matter, if the relief sought is enforceable only in some other jurisdiction, if the cause of action may be prosecuted or defended only in a court of some other jurisdiction or if no sufficient reason for the granting of the certificate is shown at the particular time.

"NO SUFFICIENT REASON..."

It should be noted in passing the very broad nature of the last proviso. We have been advised in the course of our hearings that from time to time in the past certificates have not been issued with respect to actions that would appear to fall within Section 12 and hence, with respect to which the issuing of certificates would appear to be mandatory because there seemed to be "no sufficient... reason at the particular time". This has been particularly true respecting applications for certificates to bring petitions for divorce. In certain areas and at certain times Area Directors and indeed Area Committees have required that "sufficient reason" be shown for the granting of the certificate. The mere *prima facie* legal entitlement to a divorce has not been considered a sufficient reason. Indeed at one time the Legal Aid Committee laid down a somewhat stringent set of guidelines to be applied by all Area Directors. These provoked considerable public controversy and they were withdrawn or substantially modified within a relatively short time.

The two areas of eligibility that have produced most response before our Task Force have been those of class and group actions and proceedings sought to be taken by groups before various public authorities. While certain Area Directors have in fact issued certificates in such a way as to meet the requirements of group requests, the combination of the Regulations and the Rules of Practice in the Supreme Court of Ontario and the County and District Courts is such as to make it doubtful in most cases whether certificates can properly be issued for such purposes. At the very least, the practice results in undesirable ambiguity and uncertainty with respect to these important matters.

YORK COUNTY REGIONAL OFFICE

Special comment should be made about the operations of the York County Regional Office. In round terms, this office is responsible for approximately half of the population of the province and does almost half of the work. In the thirteen

week period ending February 15th, 1974 the York Area Legal Aid Office gave service to 10,389 persons or an average of almost 800 persons per week, including telephone advice to 2,537 persons or approximately 195 per week. To this should be added applications taken at the Family Court, advice given there, applications received at the Don Jail, at several clinics manned for various hours during the week and mail applications for a grand total of 12,072 persons or 928 per week. One must immediately be impressed by the large volume of persons assisted by this service. Both the professional and administrative staff deserve credit for the way the difficult task is performed, particularly considering the fact that the physical standards of the premises and equipment are far from adequate. We must state immediately that The Law Society is entirely conscious of the inadequacy of this office from a physical point of view and has made efforts to decentralize, some more effective than others. In the first place, the decision was made, properly in our view, to separate the criminal service from the civil and to place the former in an office in the Old City Hall, the building in which most of the Provincial Courts (Criminal Division) are located. This would have the desirable effect of permitting an applicant for criminal Legal Aid to make his application and frequently to have it disposed of immediately following his first appearance and remand, thus making it unnecessary for him to seek out a second address in the downtown area with which he may very well not be familiar. It should expedite the process of granting criminal Legal Aid and it will relieve very greatly the pressure on the existing office.

The location of the present office was chosen because of its proximity to the downtown courts and its accessibility by public transport. It is accessible in the sense of being very close to rapid transit, street car and bus routes leading to downtown Metropolitan Toronto. When it is recalled, however, that the area includes the Town of Newmarket, the Borough of Scarborough, and the Borough of Etobicoke it will be appreciated that the distances many applicants have to travel are very significant. Any person attending at the address given finds himself in the entrance to a large and expensive restaurant. He is immediately faced with a placard stating that Legal Aid is available around the corner and he must leave the building, return to the street, round the corner and climb a dismal flight of stairs in order to reach the Legal Aid office.

When he reaches one of the two wickets at which the first contact with the Legal Aid staff is made he is asked whether he is concerned with criminal or civil aid and every effort is made by the receptionist, assisted by physical separation of the two reception wickets to keep this information confidential. For the same reason, an applicant who has had his name taken by the receptionist is then given a number and asked to wait in a rather dismal waiting room which is frequently very crowded. Eventually, his number is called and he is directed to an interviewing room. We have no difficulty in accepting the information we were given by more than one person that the experience of waiting in this area and hearing oneself referred to simply by number can be a depressing one.

Much more must be done to improve facilities in the York area and access to those facilities. We will have more to say in this connection later. In passing we simply note that much of the routine of this office is directed quite properly to maintaining the anonymity of the applicant, as required by The Legal Aid Act. If our philosophy is accepted and Legal Aid is finally considered as a right and the stigma of charity removed, we see no need to treat the fact of the grant of Legal Aid

as a matter that must remain confidential and the impersonality of the initial contact can be greatly reduced.

At this stage, we would like only to add that the inter-relationship of the various disciplines and the various services involved in assisting today's citizens to become acquainted with and to exercise their legal rights and to claim various benefits to which they are entitled is nowhere more apparent than in the York area Legal Aid office.

CHAPTER 2

EVALUATION AND COMMENT

The general instruction given to our Task Force was "to review in depth the operation of the Legal Aid Plan in Ontario and determine the parameters of its future direction and development in order to ensure that it has the capacity to meet its objectives in the years ahead". In its Preamble the Order-in-Council points out that the six years (now seven) during which the Plan has been operating significant social and economic developments have been taking place in the Province of Ontario and that Provincial and Federal Legislation "has created a broad range of legal rights and remedies which are placing increased demand on legal services".

We have little doubt that at the time of its creation, the Ontario Legal Aid Plan was the most comprehensive in the English speaking world. It committed the Government of Ontario to a Plan in which the cost was open-ended but was obviously going to be considerable, in recognition of the fact that equality before the law, one of the proudest boasts of nations within the Anglo-American system, was a meaningless phrase if access to the machinery of the law was denied to a substantial proportion of the population by reason of their inability to pay for it. Having reviewed the then existing voluntary Plan and decided that it was inadequate and could not survive meaningfully, the Joint Committee on Legal Aid stated in 1965 its conclusion "... that overwhelming opinion today is that Legal Aid should form part of the administration of justice in its broad sense. It is no longer a charity but a right... The Committee is satisfied that in Ontario the view of Legal Aid as a charity has changed and that this change will ultimately occur in other places where the traditions of democracy are adopted".

The same sort of conclusions had been reached by the Rushcliffe Commission in the United Kingdom some years earlier. When the Joint Committee Report was published, there was general agreement with its philosophy.

However, when some of the principles of the report were enacted into legislation and when that legislation was implemented, it became apparent that the concept of right as opposed to charity had not been fully espoused. The outstanding evidence of this was the incorporation into the scheme of the proviso that 25 per cent should be deducted from the fees of participating lawyers as their contribution to the scheme. This clearly represented a hold-over from the "charitable" concept of the preceding voluntary Plan and indeed in the most recent Annual Report of The Law Society upon the Ontario Legal Aid Plan, that for the year ended March 31st, 1973 the second paragraph of the first section refers to the "profession's charitable contribution..." represented by the 25 per cent reduction from the total of accounts for fees submitted.

The Joint Committee Report recommended a very substantial broadening of the coverage to be supplied by Legal Aid and in most respects its recommendations were adopted when the legislation was drafted. In the result, some 54,760 applications for Legal Aid certificates were received during the first year of the operation of the present Plan, 38,860 certificates were issued and 67,204 people were assisted by Duty Counsel, civil and criminal. This compares with a total of 54,885 persons assisted during the entire 12 year period in which the previous voluntary scheme had been in operation. As was indicated by a former Treasurer of The Law

Society, the extent of the need in such an undertaking as Legal Aid can never be known until the means of meeting it is made available. That observation has relevance for the future as well.

It is significant that from the beginning the only matters with respect to which it was made "mandatory" to issue a certificate to persons otherwise eligible were court proceedings, civil or criminal. We have already observed, however, that the effect of Section 39(b) (vi) of the Regulations is to make nothing whatever truly mandatory. Moreover, there are only two references in the coverage sections of the Act to non-litigious matters; these are Section 13(c) which provides for "drawing documents, negotiating settlements or giving legal advice wherever the subject matter or nature thereof is proper or customarily within the scope of the professional duties of a barrister and solicitor" and Section 14(1) (c) which refers to "any matter referred by the Area Director to the Area Committee". In fact, there would be general agreement amongst members of the profession that the greater part of the time of most lawyers is taken up with non-litigious matters. Prevention rather than cure has been the watchword of most solicitors throughout the history of the profession.

An examination of the antecedents of the present Legal Aid Plan and the history of its enactment makes it plain that the members of the Joint Committee, the Treasurers of The Law Society during the critical formative years and almost all those who became chairmen or prominent members of the Legal Aid Committee were members of the profession who practiced as counsel in the courts. The popular view of the lawyer as developed by the media is that of a person fighting for the rights of his client in the courts. The exact type of aid required and the dimensions of a problem are easier to define in cases of outright confrontation and litigation than other areas. The early examples of legal assistance were outstandingly comprised of such things as the custom of the court appointing counsel for indigent persons charged with serious crimes, the practice of the Dock Brief and such institutions as the Scottish Duty Solicitor who was concerned exclusively with the rights of persons in court.

All these influences made it natural and perhaps inevitable that the early developments of the Ontario Legal Aid Plan should concentrate on the provision of counsel for those persons with little or no means who became involved in court proceedings.

We have already pointed out the large disparity that exists between the cost of each criminal or civil case and that of each instance where legal advice has been given. We have suggested that most lawyers in their private practice appreciate the importance of timely advice and the fact that such advice, habitually sought and given, will prevent many lawsuits. Litigation is sometimes the result of an ambiguity in the law, a failure to understand the law or a failure to apply the rule of law. A preoccupation of the legal profession as a whole is surely the operation of the rule of law and its application in the daily affairs of their clients. The present Legal Aid Plan, in our view, quite naturally and properly, concentrated upon litigation, the obvious manifestation of the impact upon or application of the law to certain individuals. Preventive law, in the sense of timely advice, the careful drafting of necessary protective documents and merely the simple process of advising individuals of the existence of rules of law applicable to their situation, while less dramatic, is the sort of law that is practiced by most lawyers most of the

time. It is time consuming and expensive but it is the area in which most people, well-to-do as well as poor, require advice and assistance most often. Our figures would also suggest that it is apt to be less expensive than ''cases'', many of which must be processed because of the lack of timely advice and assistance.

The Law Society, helped by British experience and example, has been making efforts to place greater emphasis upon the advice and assistance aspect of the Legal Aid Plan and to make this sort of service more readily available to most people who qualify for Legal Aid. A major problem, however, is that in the case of poor people, who comprise by far the largest group of those now eligible, it is frequently demonstrable that the cost of assisting them to exercise a right will exceed the tangible value of the right itself and hence may very well be barred by the provision of Regulation 58(1) that requires a solicitor to furnish the Area Director his written opinion ''that it is reasonable under all the circumstances to go on with the proceeding for which a certificate has been issued''. And it may frequently take a great deal of time, and hence money, to decide and advise a poor man upon rights that may exist under legislation or private contract relating to employment, housing, welfare or other social benefits vitally important to the poor man but small in terms of absolute dollars.

During the period in which the Legal Aid Plan has been operating, social and economic changes have occurred on an almost unprecedented scale and these have, at least to an extent, been reflected in the law. Much legislation has been enacted, federally and provincially, dealing with consumer rights, the relationship of landlord and tenant, social benefits, economic and other anti-discrimination rules, immigration matters, civil rights, workmen's compensation and a great variety of activities and occupations to be dealt with by a diverse body of tribunals, boards and commissions. While legislation of this type is almost invariably expressed in general terms, a very high proportion of it affects the poor person more directly and intrinsically than a person of means or affluence. Not only is it more and more difficult for the expert, let alone the layman, to have knowledge of the law, more and more of these detailed regulations affect the individual and particularly the poor individual, at his work and in his life.

The 23rd report of the Lord Chancellor's Advisory Committee under the Legal Aid and Advice scheme in Britain contains the following:

> ''We are continuing to gather evidence on the subject from a variety of sources but, while it is unsafe to generalize, and the position varies a great deal in different parts of the country, we have little doubt that:-
>
> (a) There are many people whose legal rights are, for a variety of reasons, at present going wholly by default;
>
> (b) Some of these are unaware even that they possess such rights, others realize it but either do not know how to obtain help in enforcing them or lack the money or the ability or both, to do so;
>
> (c) There is a severe overall shortage of solicitors in the country and, mainly for economic reasons, their geographical distribution is very ill-suited to serve many of the poorer and most disadvantaged sections of the community;

(d) There are considerable areas of the law, notably those relating to housing, landlord and tenant matters and welfare benefits, where expert advice and assistance is urgently needed but is often hard to come by.''

Except for some qualifications regarding paragraph (c) we endorse that statement as one completely applicable to the Province of Ontario in 1974.

We have pointed out that this is an era of legislative change. In a House of Lords debate upon the Report mentioned above on May 15th of this year, Lord Gardiner, former Lord Chancellor and the person perhaps more than any other single individual responsible for setting in train the inquiries and debates that led to the present Legal Aid legislation in England, had this to say:

> ''Those of us who are concerned about this problem have always had a very simple case, which is that it is absolutely useless to go on and on passing Acts of Parliament giving poor people legal rights if they cannot afford to enforce or defend their rights; because if they cannot afford to enforce or defend them they may just as well throw their legal rights into the wastepaper basket.''

In addition to the point made by Lord Gardiner, the concept of participation by which is meant the ever-increasing visibility of citizens in the regulation of their own affairs, has become part of the fabric of our society. This, together with the right to a hearing prior to the enactment of local legislation that may have a profound effect upon the rights of large numbers of people, has become accepted as a matter of both social and legal justice. These factors in combination may have substantially altered the criteria against which any legal aid plan should be judged. To a large extent the legal profession, hampered by substantive law and by the rules of procedure in the courts, and not least by the sometimes staggering cost involved, has been able to deal with such matters only in the context of individual claims. Group and class actions have been narrowly confined and difficult to conduct. Planning legislation, guidelines for licencing bodies, the exercise of discretion in very important matters by such bodies as Committees of Adjustment, and the impact upon whole communities of multi-million dollar projects such as bridges, expressways, and office, commercial and residential developments cannot be adequately dealt with in these traditional ways. It is no criticism of the founders or administrators of the Ontario Legal Aid Plan to point out that the present structure and content of the Plan leave many gaps and inadequacies of this nature. The wonder is that so much has been done in such a relatively short period of time. Nevertheless, events and a changing social and economic climate have outstripped the Plan.

In response to our newspaper advertising we received in writing and in oral submissions in various communities throughout the province a substantial number of complaints about the operation of the Plan. They came from individuals, groups of citizens, members of the academic community and in a few rather isolated cases from members of the Bar. Members of the Bar were justifiably confident that in Legal Aid cases a satisfactory level of service was provided. This view was generally consistent with the attitude of Legal Aid clientele itself and indeed the public opinion survey which our researchers carried out seems to indicate that of the 14 per cent of the population who have made use of Legal Aid the experience was satisfactory to 72 per cent. Members of the Bar, however, were divided on the extent to which their services were responsive to the needs of potential Legal Aid

clientele and the extent to which the delivery techniques exhibited by the traditional private law firm were satisfactory to the poor. There was a substantial body of interested and informed opinion which persuaded us that the single delivery mode contemplated by the Joint Committee Report, the private law office, was inadequate to meet all the existing or the expanded objectives of legal aid in Ontario. This opinion has developed in part as a result of an increased or more accurate awareness of the range of professional responsibilities imposed on members of the legal profession. They are no longer seen merely as professionals who handle documents. This traditional concept represents only a modest portion of the lawyers' professional responsibility. The wide range of professional services that lawyers have traditionally provided to their clients is expected to be provided to the poor as well as the rich. The concept of Legal Aid as "litigation" is now clearly seen as inadequate.

Though the survey indicates that most clients would prefer going to a private downtown office, we were told that in some cases, primarily in large urban areas, the physical location of the offices of the private profession made them psychologically and physically inaccessible to the poor. Private offices located in the heart of the business community are not easily visible or accessible and the fact that most poor people come from a different socio-economic group than members of the private Bar further inhibits contact.

We were also told on more than one occasion that the profession tended to adopt a narrow concept of what constituted a "legal problem" and occasionally appeared unsympathetic to problems which traditionally affect the poor such as Small Claims Court cases, landlord and tenant, welfare and unemployment insurance problems. We are uncertain to what extent this general observation is warranted, but it is apparent that the poor exhibit a certain reluctance to "trouble" lawyers about such matters which the poor no doubt perceive as minor in terms of the profession's priorities. The number of cases of this nature appearing in the Plan's statistics is not large. The attitude insofar as it exists is no doubt symptomatic of the fact that the private profession has had no occasion to and therefore generally speaking has not developed expertise to deal with the particular ramifications of such problems. Many of the common law and statutory issues that are raised by the problems of the economically self-sufficient are no more complex than some of the problems raised by The Unemployment Insurance Act and a wide range of social welfare, landlord and tenant, and compensation legislation. There is no doubt, however, that few members of the profession have developed the expertise to recognize, analyse and solve such problems expeditiously.

From the point of view of the potential client, while 75 per cent of those interviewed for the survey had heard of the Legal Aid Plan exactly 50 per cent had no idea of how to apply or where to go. The survey indicates that close to three-quarters of those questioned held lawyers in high esteem, feeling that most were dedicated to helping people in trouble. Seventy-three per cent, however, felt that lawyers were too expensive and an even higher percentage held this opinion amongst persons earning more than $8,000.00 annually.

It is our judgment that the criticisms that were made of the existing Plan, insofar as they have validity, can to a very large extent be resolved by the re-structure of the Plan itself and the provision of a variety of delivery modes. The restrictions built into the existing legislation as to the availability of services and

the fact that essentially only one mode of delivery of those services is contemplated have been inhibiting factors. It is to the credit of The Law Society that it has become increasingly aware of the inadequacy of the single delivery technique to deal with the variety of legal problems that exist and has begun to develop alternative techniques. In our view, this approach should be continued and indeed given high priority.

In the course of our inquiries we have reviewed the new Legal Aid Plans in the Provinces of Quebec and Manitoba. We examine them in more detail in our later discussion of delivery of services. There are both similarities and differences between the Ontario and the Manitoba Plan. There are few similarities and very marked differences between the Ontario and the Quebec Plans.

We perceive major drawbacks and weaknesses in both those Plans just as they have many advantages. We cannot conceive that in either Manitoba or Quebec there will be an early and rapid expansion of resources sufficient to permit the salaried lawyers of the Plan to keep abreast of their constantly increasing case loads, to say nothing of their ability to continue with the educational, creative and law reform functions that are strongly stressed by both Plans. In short, the salaried staff of these Plans may become overburdened at the start; there may be a danger that the consequent harm to the Plan will be irreversible. At the same time one cannot help feeling impressed with the zeal, idealism and energy of the predominantly youthful staffs that have been attracted to both of these forward looking Plans. One must be equally impressed with the single-mindedness of the administrators of such Plans. They perceive their whole duty to be one of serving the public and they have no competing interests.

To summarize this portion of our report perhaps it is enough to say that our inquiries have led us to have nothing but admiration for the founders of the Ontario Plan. We find that it has been conscientiously and energetically administered by The Law Society and that, particularly in the more recent years, a degree of imagination has been brought to bear upon its administration. While it is a reasonably comprehensive Plan, it is not sufficiently comprehensive for today. There are many reasons for reaching this conclusion. This may be partly due to the conservatism of the legal profession which has administered the Plan, but more than likely to the rapid proliferation of legislation, regulation and tribunals. It is largely due to the very different views the contemporary community has of itself. Above all, it is due to the perceived need to be satisfied that, on the civil side, the economic benefits of the applicant's proposed course of action will justify the cost of proceeding.

In the period under review the public defender and the community or storefront law office have experienced mixed degrees of success in the United States. Some re-thinking is being done in that country regarding the place of the private Bar in Legal Aid and some disillusionment has set in with respect to the storefront clinic as a panacea. During the same period exciting and worthwhile experiments have been undertaken in our neighbouring provinces and in other parts of Canada. We have learned much from these and each of them contains elements that can profitably be imported into any full scale Legal Aid Plan that may be continued or may be adopted in Ontario.

In the submissions made to us on behalf of The Law Society, the retiring Treasurer, Sidney L. Robins, Q.C., submitted to us that it would be unsafe and

inappropriate to import into Ontario any Plan developed elsewhere, however efficient and useful such Plan might appear to be in its own setting. He pointed out that the history of Legal Aid in Ontario, the organization of the Bar into strong and cohesive county associations, and the organization of that same bar in a strong province wide association, The Law Society of Upper Canada, constituted a unique set of circumstances requiring Legal Aid to be dealt with in a unique way and in a way consistent with those traditions.

In this respect we agree with The Law Society about the Plan. We have difficulty, however, in reaching the conclusion that Mr. Robins would have us reach, namely that administration of the Plan should be left exclusively with The Law Society.

The Legal Aid Plan is a large undertaking, both in terms of the number of people involved in its administration and in terms of budget. Our consultants have concluded that the net cost of the Plan for the year ended March 31st, 1974 was $13,235,000.00 including the direct and administrative costs of the Legal Aid Assessment Branch of the Ministry of Community and Social Services but excluding an allowance of $608,000.00 for payments by the Plan to the province with respect to court fees, fees of the Official Guardian, etc. $3,970,000.00 represented the contribution of the Government of Canada with respect to criminal cases and hence the net operating costs of the Plan to Ontario was $9,265,000.00. In the light of what it accomplishes and in the light of the provincial budget as a whole, this is not a large sum. Indeed, if our recommendations are substantially implemented, and even if they are not, the overall cost is bound to grow and in our view should grow very substantially. Whatever the precise amount, however, these are public funds and they are not insignificant in size.

The Plan that we envisage must have room for much flexibility and experimentation in answer to the perceived needs of various sections of the province and the developing needs of the community. The major share of the cost will continue to be borne by government but there should be little direct control by government of the activities or the administrators of the Plan.

We have already expressed our appreciation of the singlemindedness of the administrators of the Manitoba and Quebec Plans. Legal Aid in Ontario will have to be funded on an increasing scale and its administrators will have to be given power to experiment and to innovate. To justify public support to the extent necessary, it will have to be made plain to the public that the governors and administrators of the Plan will have as their sole motive the public good.

A number of briefs were delivered and submissions made to us representing that the position of The Law Society under the present scheme involves a conflict of interest. The public good must be the sole purpose of the Legal Aid Plan, whereas The Law Society is by statute the governing body of the legal profession and must be primarily concerned with its welfare. The term "conflict of interest" may not be one appropriate in the circumstances, and we state emphatically that no suggestion was made to us at any time that The Law Society or its Legal Aid Committee has in fact permitted such a conflict to develop. Nevertheless, it is impossible to perceive the direction of the Legal Aid Plan as being sufficiently single-minded if it is left in the hands of a Committee of The Law Society, reporting to Convocation, the governing body of that Society, both groups being composed overwhelmingly of lawyers.

It is on the question of obtaining funds for the operation of an extended plan that The Law Society might find itself in a very difficult position. Public funds will be required for advertising and educational programmes in addition to other substantially extended services.

To press for the required funds it would be in the best interests of the public if an independent body submitted and vigorously supported the request.

We considered a model in which the Legal Aid Committee would have a majority of laymen in its membership and which would in fact control the Plan, Convocation having only the power to receive the Committee's reports but not to reject them. We could not conceive of a self-respecting body such as Convocation being content to act in such a role.

We considered the creation of a crown corporation following the examples of either Manitoba or Quebec or of other Canadian provinces. We concluded that the notion of government control is too closely associated in fact and in the public mind with such an institution.

We recognize fully that when an institution is funded, almost if not quite entirely by government, ultimate control must rest with government. However, we are persuaded that as nearly as may be, the appropriate institution to govern the Legal Aid Plan as we envisage it should resemble a partnership between The Law Society and the public, though we must recognize that the public will be represented by those whom government nominates for this purpose.

It is difficult for persons not previously associated with The Law Society or the Legal Aid Plan to appreciate the amount of dedicated voluntary effort that has been contributed by some of the lawyers of Ontario in order to make the Plan the success that it has been. Quite apart from the reduction of 25 per cent that has been taken by lawyers acting as Duty Counsel or under certificates, there has been a great deal of effort, expertise and skill contributed by senior members of the Bar as members of the Legal Aid Committee, Subcommittees of the Committee and members of Convocation itself. To this list must be added the many persons who have participated in the work of the Area Committees. The only cost to the Plan arising out of this large volume of devoted service is whatever may have become due under the provisions of Regulation 24 which provides for the payment of expenses incurred in attending meetings of an Area Committee. While we have made no formal inquiry in this regard it is our impression that only a very small number of Area Committee members have ever claimed expenses for their attendance.

So far as the direct service to clients is concerned, we have been repeatedly assured by members of the profession that a shift in control from The Law Society to an independent corporation would make little or no difference to their participation. If anything, the proposed abandonment of the 25 per cent reduction might lead to increased participation.

Our anxiety to retain the goodwill of the profession, therefore, relates not so much to the part played by lawyers performing work for the clients of the Plan as it does to those who have served in an advisory and administrative capacity and who, as members of Convocation have given so freely of their time and skill. Despite the

changed structure that we now suggest, and the reduction in the number of persons who will participate directly in policy making, we envisage a very large role for The Law Society in the Plan and we are confident that this role will continue to be played with energy and integrity.

The re-structuring of the Plan and the development of a variety of legal service delivery techniques which this report envisages is intended to respond to the very wide range of needs and circumstances which exist across the communities of this province. The requirements of a community like Kingston are unlikely to be precisely the same as those that exist in Kenora. In neither community do the needs and circumstances approximate those that exist in Metropolitan Toronto. Because we see as an inherent weakness of the existing Plan its inflexibility by virtue of its enabling legislation and its structure, the intention of these provisions is to create a scheme in which an independent, publicly supported Board of Directors and broadly based Area Committees will have the requisite flexibility to deal with particular delivery problems in a creative and innovative fashion. Student legal aid societies, an important support of the existing Plan, will not in the nature of things exist in every community in Ontario. Social welfare agencies taking up the slack may be more effective in one community than another. Private enterprise legal aid clinics may develop and be supported in one section of the province but not in another. Neighbourhood legal aid clinics as contemplated by this report may not be required or desirable in many sections of the province where the existing need is adequately met or where it can be met by a more useful and satisfactory technique. What we do think the public has a right to expect, however, is that the development of these delivery techniques, heretofore haphazard and accidental, will be established as permissible modes of legal aid delivery under the Plan so that they may be implemented in those communities where the need exists and to which the technique is appropriate.

We do not, therefore, see the private office, the staffed neighbourhood legal aid clinic or the rotating panel as competing but rather as complementary models, all of which are designed to remedy the chronic under-utilization of the profession and the law by the poor. Clinics, it seems to us, may be appropriate where the presence of Legal Aid in a forthright and obvious way is desirable in the interests of the poor of the community and where the patterns of private law practice have created a sense of psychological and physical inaccessibility. What we seek is not to maximize the use of one technique or the other, but rather to maximize the chance that the Plan will be used by its intended beneficiaries.

CHAPTER 3

STRUCTURE OF THE PLAN

In the previous section of this report we have recommended that the Legal Aid Plan should be administered not as at present by a committee of The Law Society of Upper Canada, but rather by a statutory entity in which both the members of the public who have an obvious interest in the successful operation of the Plan, and the members of The Law Society who have a demonstrated commitment to its efficiency, will play the controlling role.

THE CORPORATION

We, therefore, propose that The Legal Aid Act be amended, so that the control and administration of the Legal Aid Plan is vested in a statutory non-profit corporation named Legal Aid Ontario. The members of the corporation will be its directors from time to time. The sole function of Legal Aid Ontario will be to perform the duties vested in it by The Legal Aid Act and generally to administer and carry forward the work of the Legal Aid Plan.

BOARD OF DIRECTORS

The affairs of the corporation should, in our judgment, be governed by a Board of Directors of twenty persons, including the Chairman and the Vice-Chairman. The quorum of the Board should be seven members present in person. The Board should meet monthly or at the call of the Chairman.

In addition to the Chairman and Vice-Chairman, nine members of the Board should be appointed by the Lieutenant-Governor-in-Council on the nomination of the Minister of Justice and Attorney General, and nine members appointed by The Law Society of Upper Canada. Apart from the mode of appointment we propose no restriction on the background of members of the Board, except that in our view it is clearly desirable that members of the general public, including those who use the Plan, should have a prominent and significant role. With this in mind it is desirable that the appointments made by the Lieutenant-Governor-in-Council should come from the lay public.

This will constitute a large Board but it is essential in our view that it be broadly representative and this cannot easily be done with a smaller number. In addition, at least in the early stages much work will be required and we think it desirable that a reasonable number of people be available for the various specialized tasks. At the same time the provision made for a reasonably small quorum will ensure that matters of urgency can be attended to on short notice despite the difficulties that sometimes arise in convening relatively large numbers of people.

We think that, with the exception of the Chairman and Vice-Chairman, appointments should normally be for periods of six years but not all members should retire at one time; one-third of the Board should retire but be eligible for re-appointment every two years. The initial appointments therefore should be made one-third for six years, one-third for four and one-third for two years.

The responsibilities of the Board of Directors under an expanded Plan will be large; there is no doubt that membership on the Board will involve a substantial commitment of time and effort on the part of each member. We, therefore, propose that a per diem allowance for sittings of the Board or its committees be fixed on a scale commensurate with the principle that all members of the Board must be permitted to take an active part in its deliberations and its policy making. Alternately, a number of members could receive full time appointments.

To assist in the transition pending enactment of the enabling legislation, we recommend that The Legal Aid Act and Law Society Regulations be amended to permit the appointment of lay members to The Law Society's Legal Aid Committee. The Attorney General could then make such appointment and these lay members could then be appointed to the Board of Legal Aid Ontario.

REPORTS

It will be the obligation of the Board of Directors to report annually on the operation of the Plan to the Minister of Justice and Attorney General for Ontario. It should, in our view, be an obligation of the statute that the Minister of Justice and Attorney General table the report of the Board of Directors in the Legislature within thirty days of its receipt or if the Legislature is not then sitting, within five days of the commencement of the next session.

In addition, it is our view that the Board of Directors should report periodically to The Law Society of Upper Canada in Convocation, for the purpose of acquainting The Law Society with the details of the administration of the Plan, and the policy decisions that the Board of Directors have developed.

While it is not contemplated that The Law Society of Upper Canada should in any sense control the policy or administration of the Plan, it is our view that regular reports can develop a continuing co-operative liaison between the Board of Directors and The Law Society to the mutual benefit of both. Such co-operation is important in view of the fact that The Law Society continues to be charged under its statute with the licencing, regulation and control of the profession. The expanded Plan that we contemplate in this report will no doubt have many consequences for the legal profession in the Province. We are confident that a close liaison between the Plan and The Law Society should be developed and maintained.

It goes without saying, however, that beyond the powers specifically reserved neither the Government of the Province or the Attorney General on the one hand nor The Law Society on the other, should have direct or indirect control of the administration and policy of the Plan itself. During the last seven years, the independence of the Bar has been the foundation stone upon which the present Plan was created and developed. It is that independence which has given the public a sense that it can be well served under the Legal Aid Plan. We envisage the continuance of this independence in a setting in which the licencing and professional conduct of barristers and solicitors continues to be the exclusive charge of the Society, while Legal Aid Ontario, separated from both government and the profession can single-mindedly serve the public interest by the provision of legal services. We see, too, a major role for The Law Society through its continuing education programme, in imparting the special knowledge and techniques which will be required for many of the particular roles to be played by lawyers under the Plan.

THE CHAIRMAN

The Chairman of the Board of Directors should be the principal officer of the Plan. Whether he be a layman or lawyer, the Chairman should serve full time and be a person of broad understanding and experience in public affairs and a resident of Ontario. He should be compensated at the same scale as a Judge of the Supreme Court of Ontario, and should be appointed by the Minister of Justice and Attorney General of Ontario, for a period of seven years to hold office during good behaviour. He should once be eligible for re-appointment. The Board of Directors apart from its regular monthly meeting shall meet at his call.

THE VICE-CHAIRMAN

The Vice-Chairman should be appointed by the Minister of Justice and Attorney General for a term similar to that of the Chairman. He as well should devote his full time to the business of the Plan. He should act as Chairman in the latter's absence or incapacity.

Either the Chairman or the Vice-Chairman should be a member of The Law Society of Upper Canada and should be appointed from a panel of not less than three persons nominated by that body.

CHIEF EXECUTIVE OFFICER

The Chief Executive Officer should be appointed by the Board of Directors for such term and under such conditions as it deems appropriate. He should be responsible to the Board of Directors of Legal Aid Ontario for the day to day administration of the Plan, and should act as Secretary to the Board of Directors.

In order to carry forward its work, the Board of Directors should appoint such other Deputy Directors, Accounts Officers and Comptrollers of the Plan as it considers necessary and appropriate.

Generally speaking, we have been impressed with the administrative machinery of the existing Legal Aid Plan, and we, therefore, propose that the establishment of Legal Aid Ontario should effect minimum interference with the existing scheme of administration. We do feel strongly, however, that this matter must be one left to the good judgment of the Board of Directors.

REGIONAL DIRECTORS

Having made this last observation, we nevertheless suggest, that it is in the interests of the satisfactory administration of the Plan across Ontario that a number of Regional Directors be appointed, probably four or five, who will report to the Chief Executive Officer of the Plan. While precise definition of their responsibilities will be a matter for the Board of Directors to consider and decide, we have reached this proposal because we are concerned about the uneven administration of the present Plan that we have observed across the province. It is, of course, obvious that certain communities may have special needs and the response of the Plan to those needs may vary from place to place. We are conscious, however, that it must be the objective of the Plan to assure a standard minimum provision of service to all citizens.

We think particularly that each Regional Director might be charged with the following matters:

1. The regular supervision from the head office of the provision and administration of Legal Aid in his assigned region.

2. The development, with the assistance and advice of Area Directors and Area Committees, of particular programmes to more effectively meet the needs of his region.

3. The development of schemes whereby the Area Directors and Area Committees within the region can meet regularly to discuss common problems.

4. The Regional Director should come to know his region and its personnel well by regular visits to the centres within the region. In particular, Regional Directors should routinely be available for meetings of Area Committees.

5. Regional Directors should be available to give advice and assistance to Area Directors and Area Committees within their region.

In developing regions regard must be had for geographical proximity and similarity in composition and interest of various parts of the province. We think it would be desirable for the senior plan Officer with responsibility for Legal Aid services to native people to hold rank in the Plan equivalent to that of a Regional Director, though his responsibilities would differ as outlined in our recommendations regarding native peoples.

AREA DIRECTORS

In our judgment there should continue to be some 46 areas, although we recognize that it may be desirable in the future to make adjustments if regionalization of the courts or counties develops. Each area, therefore, corresponding roughly to a county or district, should have an Area Director appointed by the Board of Directors of Legal Aid Ontario. The Area Director, where possible, should be a member of the local Bar and should act as the Secretary to his Area Committee. It will be his responsibility to convene meetings on a regular basis. The Area Director should have the same power to issue legal aid certificates in matters where legal aid is available as of right, as is granted elsewhere in this Report to members of the practicing Bar. In addition, he should have the power to issue legal aid certificates in discretionary matters not specifically reserved to be dealt with by the Area Committee. The Area Director should have the power to revoke certificates granted by others under the scheme hereinafter dealt with and there should be an automatic appeal to the Area Committee from his decision. He should be generally charged with bringing to the attention of the Area Committee all matters of urgency in the administration of the Plan within his area. In particular, he should consult it on policy and administration to the greatest degree possible.

In visiting various parts of the province we have been generally impressed with the zeal, commitment and ingenuity of the Area Directors in the administration of the present Plan. Membership in the local Bar should continue to provide a

nexus between those members of the public that the Plan is designed to serve and the local members of the profession whose commitment is to provide the service.

Even in cases reserved under the Plan for an Area Committee, an Area Director should have authority on an interim basis to issue a certificate with or without conditions when a limitation period is about to expire or for some other reason where delay will place the rights of the applicant in jeopardy. The conditional certificate thus issued is subject to final disposition by an Area Committee and its use by an Area Director is to be confined to those cases where immediate action is necessary to preserve the status quo until final disposition of a certificate question may be made (Section 16(6) and Regulation 49).

The Area Director should be responsible for recommending to the Board of Directors the location or locations in his area of the offices of Legal Aid Ontario, and should be generally charged with the administration of those offices. It may be appropriate from place to place to appoint Deputy Area Directors who may or may not be members of the profession.

Generally, therefore, the Area Director should be responsible to the Regional Director for the administration of the Plan within his area, act as the Secretary to the Area Committee for his area, establish and maintain such Legal Aid, Duty Counsel and Advice Panels as upon recommendation of the Area Committee the Board of Directors may approve, and perform all other duties assigned to him by the Regional Director or the Board of Directors.

AREA COMMITTEES

In our judgment, the Area Committee in each area should be comprised of a minimum of 8 persons, who are resident within the area and who are appointed by the Board of Directors. Consistent with the maintenance of co-operation between the public and the profession one half of the Area Committee should be members of The Law Society and the local Bar, and the remaining one half lay persons.

The geographic, demographic and economic conditions of an area are factors that should be considered in the composition of each Area Committee and care should be taken to ensure a broad representation of all interests, urban and rural, professional and non-professional, rich and poor.

It is a desirable principle that laymen as a rule should not be drawn from occupations closely related to the legal profession, or the administration of justice. The intent of the scheme thus is that the public should in this way develop a substantial commitment to the policy making and the administrative functioning of the Plan in its area.

Particularly, the Area Committee should have the right and duty:

1. To request of the Board of Directors the type of legal service required in its area; e.g., fee for service only, clinics, salaried employees, or rotating panels.

2. To recommend the use to be made of Duty Counsel and particularly the duties of Civil Duty Counsel in rural areas.

3. To determine initially whether Plan services should be provided to group applicants.

4. To issue certificates in respect of matters specifically reserved to it, for example, in appeals.

5. To hear appeals from refusals or revocations of certificates by Area Directors.

6. To propose changes in procedure and reform in the law.

7. To hear representations and receive reports from clinics or clinic advisory boards where those have been established.

8. To report annually to the Board with respect to their functions and the administration of the Plan in their area.

9. To maintain liaison with social agencies in the community and to promote local awareness of the services of the Plan.

In our judgment, a member of an Area Committee who removes his place of business or residence out of the area for which he was appointed, or fails to attend three consecutive meetings of the Committee, without its leave, should be deemed to have resigned.

At the first meeting in each year each Area Committee should select a Chairman and a Vice-Chairman, who should hold office for the ensuing year, and who should be eligible for re-election. Both the Chairman and Vice-Chairman may vote on all questions before the Committee, and in the event of an equality of votes the Chairman should have the casting vote.

Members of Area Committees should be paid a per diem allowance to ensure that all will be able to participate fully in the Committee's policy making and administrative functions.

APPEAL COMMITTEES

There should be one or more Appeal Committees each consisting of three Board members appointed by the Chairman. The function of this Committee should be to hear appeals:

(a) by an applicant or an Area Director from the Area Committee with respect to certificates issued or dealt with by the Area Director;

(b) by an applicant or an Area Director from the Area Committee respecting any matter in which the issuance of a certificate is within the discretion of the Area Committee.

In all cases where a right is given to an Area Director to appeal, a similar right should be given to the Regional Director.

FUNDING

Legal Aid Ontario should at least once in every fiscal year submit to the Minister of Justice and Attorney General an estimate of the sums required to administer the Plan and provide its services during the next succeeding fiscal year.

In this report we have stressed the importance of preserving the independence of the Bar in criminal matters. With the proliferation of regulatory bodies, licencing agencies and other emanations of government, it is obviously of equal importance to ensure the preservation of an independent civil Bar which can give fearless representation to clients requiring it. Legal Aid has been open-ended in paying the traditional legal fee for service provided by lawyers. This in itself has helped to maintain that essential independence. In the future as in the past, neither direct government control nor indirect control through budgeting should be permitted to interefere with the effective continuation of this traditional role of the Bar.

Subject to that consideration, we think that the new statute should ensure that funds will be provided by the Provincial Government on a ''global budget'' basis. We are strongly of the view the Legal Aid Ontario must be free to determine its own priorities. The sums of money devoted to Legal Aid will ultimately be determined by the government and properly so, but budgetary control should not be used to dictate the specific activities of Ontario Legal Aid.

As at present, we propose that the provincial auditor should continue to examine and report to the Legislature upon the accounts for financial transactions of Legal Aid Ontario.

ADVISORY COMMITTEE

We have been much impressed by the dedication of the Advisory Committee under the chairmanship of the Honourable Mr. Justice John Brooke and many of the recommendations of the Advisory Committee foreshadow the recommendations found in this report. Under the structure here recommended, however, control of the Plan is found in Legal Aid Ontario and is remote from both the profession and the government. In addition, the new composition of the Area Committees should result in more community influence. In those circumstances the Advisory Committee will no longer serve a useful purpose and we therefore recommend that the section in the statute providing for it be repealed. In its place, we suggest that there be periodic review by a body such as a task force at regular intervals.

STUDENT LEGAL AID SOCIETIES

Elsewhere in this report we have dealt with the expanded role of student legal aid societies in those communities in which university faculties of law exist. While we do not propose to limit the power of the Board of Directors to appoint Area Committees we do recommend that in such communities the Area Committee should include at least one representative of the student legal aid society, who should be nominated by the society, in addition to those drawn from the legal profession and the community. We make this recommendation because we are conscious of the very important role that student legal aid societies play in the provision of Legal Aid in the communities in which they exist.

GENERAL

Our conception of Legal Aid Ontario is that of an independent corporation with a global budget operating under a statutory authority which assures maximum flexibility in the selection of delivery modes. It is our judgment that the creation and selection of delivery techniques should, subject to the qualifications set out hereunder, be the responsibility of the Board of Directors. They will be assisted and to a certain extent guided by the recommendations of the Area Committees. There is, in our view, no legitimate policy issue which determines that legal services under a Legal Aid Plan must necessarily at all times and in all places be provided to the public by members of the private profession. In that sense, then, we see no theoretical or practical reason why the obligation of the Plan and the needs of the poor cannot be met by the private Bar in appropriate cases but also by law students, para-legal personnel operating under the direction of lawyers, and neighbourhood or community law clinics operated by the Plan itself.

This is not merely a theoretical supposition for a number of reasons. Elsewhere in this report, we have recommended the expansion of Plan service to embrance a wide range of problems for which services are not now provided or are provided on an irregular, intermittent or discretionary basis. This recommendation, if adopted and implemented in appropriate legislation, will increase not only the volume of work that comes within the parameters of the Plan, but also, whatever delivery techniques are adopted, the public cost. We have doubts whether the private Bar, with all the dedication that it has heretofore exhibited, has the resources, the expertise or the organization to meet all aspects of these newly recognized needs. The availability of a number of delivery techniques can be a useful control to assure that the volume of work generated is appropriately serviced and is serviced in a context in which the client can be assured the appropriate expertise. We hope it can be provided on a basis that is economical for the taxpayer and economically fair to the participating Bar.

We hasten to say that there is nothing novel about an approach to the delivery of Legal Aid services which contemplates the provision of those services by a number of techniques of which the private Bar is merely one. When the Ontario Plan was established some seven years ago, it was the most advanced Plan in the Anglo-American judicial world. It became a model against which other jurisdictions measured their policy objectives in Legal Aid and to which they looked for experience. Within those seven years, extensive Legal Aid Plans have been established in Nova Scotia, Quebec, Manitoba and Saskatchewan. Each of them has learned much from considering the delivery techniques which have been adopted in other provinces. We do not believe they can be imported full scale into Ontario, although each has certain worthwhile features.

In Manitoba The Legal Aid Services Society of Manitoba Act (S.M. 1971 C. 76) basically provides for the provision of legal services by private practitioners on a fee for service basis. The Act, however, also contemplates the establishment of neighbourhood legal aid centres, staffed by full time lawyers. Two such centres already exist in the City of Winnipeg. The dual approach in Manitoba enables an applicant who qualifies for service to choose either a private member of the Bar or within certain limitations, a salaried lawyer on the Legal Aid centre staff. The Plan also contemplates that each neighbourhood clinic will employ junior lawyers, articling students, undergraduate law students, social workers and clerical help as may be required. In addition to the function of providing advice and assistance in

actual cases, the Legal Aid centre is designed as a focus for a programme of community information regarding the law and the availability of legal services. The clinic may in certain circumstances represent groups and organizations.

It is perhaps premature to judge the Manitoba programme as the Plan is just underway. At least in the City of Winnipeg, its principle virtue seems to be that the private Bar continues to provide those services on a certificate basis for which it has the capacity and experience, while the Clinic is able to concentrate its efforts on community education and a range of legal needs for which the private Bar has traditionally lacked expertise.

The Legal Aid scheme in Nova Scotia, the Legal Aid Planning Act (S.N.S. 1970-71 C. 14), contemplates the establishment of neighbourhood legal clinics throughout the province staffed by salaried lawyers. ''Free'' Legal Aid is provided solely through these clinics although it is anticipated that the clinics may call for the gratuitous service of members of the practicing Bar in their locality in order to assist in handling the work load. The Nova Scotia Plan's reliance on the gratuitous provision of private Bar services characterizes Legal Aid as charitable and is unrealistic in terms of the needs presently recognized by the Ontario statute to say nothing of the needs to which any expanded Plan may respond.

The Quebec Legal Aid Plan differs most markedly from the Ontario Plan. It, as well, is in its infancy. It looks theoretically to the provision of Legal Aid through a system of community legal centres staffed by salaried lawyers and appropriate supporting staff, a public defender office for criminal matters, and a certificate system, which entitles a client in any case to select a member of the private Bar. In fact, it is our very preliminary view that the establishment of the Quebec scheme has created a dilemma: the Plan for economic reasons effectively discourages the participation of the private Bar and thereby imposes an almost impossible case load on its community legal offices.

The Saskatchewan Plan, of the four the most recent, is again a mixed system, which at least in the more remote portions of the province emphasizes the operation of community clinics with some provision for participation on a fee basis by private practitioners.

This brief summary illustrates that notwithstanding the fee for service model that exists in Ontario, the sister provinces, no doubt cognizant of their own particular needs and responsibilities, have opted for a mixed system which comprises both the provision of staffed clinics and the utilization of the private Bar. We are of the view that this development represents a response to a number of the matters that we have earlier referred to, and generally speaking, represents the best approach to the delivery of legal services under an expanded Plan in the Province of Ontario.

We are fortified in this conclusion by the new directions that administrators of the Ontario Plan have already adopted which point to the development of clinics in appropriate locations and which recognize the desirability of this mode of delivery in certain cases. The Community Legal Services Report to the Legal Aid Committee, for example, recognizes the desirability of clinical facilities, although their proposed use appears to be restricted to special purposes and a relatively temporary role.

LEVEL OF SUPPORT

We have made it clear elsewhere in our report that in our judgment the public has been getting good value for its dollar invested in the Ontario Legal Aid Plan. In terms of the overall responsibilities of the Government of Ontario this investment has not been large. Payments to the Legal Aid fund by the Ministry of the Attorney General for net disbursements of the fund totalled $11,262,000.00 in 1973 and $12,937,000.00 in 1974. Obviously, since its inception some seven years ago the necessity to administer the Plan and provide a wide range of services has substantially increased the cost. However, cost figures can be misleading. After appropriate allowances for payments made to the province by the Plan with respect to court fees, Official Guardian's charges and other administrative charges or fees, and after allowance is made for receipts from the Federal Government in support of part of the criminal aspect of the Plan, the net cost of the Plan to Ontario in 1973 was $10,494,000.00 and in 1974 it was actually reduced to $9,265,000.00. (Woods, Gordon, Exhibit III-1)

The Government of Canada has increasingly come to recognize that Legal Aid is not only a legal but also a social service and is prepared through various programmes concerned with preventive law, public education in legal matters and anti-poverty activities to support provincial initiatives to an increasing degree. Programmes for the training of para-legal personnel, such as native court workers, social workers and community workers have been and are being supported. We have already referred to the availability of the fund created in response to the new rules governing lawyers' trust accounts. In effect, the direct cost of the Legal Aid Plan to the Government of Ontario if services were maintained at only their present level would show no increase in the immediate future and might actually be somewhat reduced.

The expanded Plan contemplated by this report will substantially increase the availability of legal services for financially eligible members of the public in areas where those services are not only desirable but necessary if the rights of the citizens of our province are to be fully protected and assured. We think that in the public interest the Government of Ontario has an obligation to make appropriate sums available for the provision of legal services contemplated by this expanded Plan. There is, of course an equivalent obligation to support the administrative requirements of the Plan. The provision of legal services to members of the public across this large province cannot be assured without a substantial and adequately funded administration. Such an administration, as we believe Legal Aid Ontario can provide, will not only assure the provision of such services on a prompt, efficient and professional basis, but will be a watchdog for the public interest to make certain that the charges deriving from those professional services will be necessary and fair.

We recognize, of course, that the financial commitment to the Plan is a matter for the Government of Ontario. We recall the statement made by the then Premier, the Honourable John Robarts, in 1967: "The objective of Legal Aid in Ontario is to ensure that everyone will enjoy the right to obtain legal advice or be represented by the counsel of his choice, regardless of financial ability to pay for counsel. However, we must keep in mind at all times that any programme in which society provides protection for the basic rights of those people who cannot help themselves cannot be permitted to become too great a burden upon society."

We are conscious of what was said by the Ontario Law Reform Commission in its report on the administration of Ontario courts, "... that the administration of justice in Ontario ranks very low in the scale of financial priorities when it comes to providing governmental services to the public." They point out that in recent times the total of the estimates allocated to the Ministry of the Attorney General has never reached one per cent of the Provincial budget. The share of that budget allocated to Legal Aid represents but a tiny fraction of total public expenditure. The annual cost of Legal Aid, for example, is less than the cost of incarcerating 1,000 inmates for a year in Ontario penal institutions. It is approximately half the operating cost of one of the larger community colleges in 1972. It is not much more than one-third of the cost of a single mile of the recent Metropolitan Toronto Subway extension.

These other priorities of government are important and no one would suggest that they should be neglected or devalued. We do think, however, that the objectives for which the Legal Aid Plan were originally established were sound. To ensure that in a province of great wealth and prosperity the less fortunate should have access to the courts and tribunals and legal advice and assistance, to assure and protect their rights and liberties is a matter of real importance to which the public generally would ascribe a high priority in terms of public expenditure.

When the Government of Ontario determines its commitment to the extended Plan, we are firmly of the view that the matter of service and administrative priorities must be left exclusively in the hands of the Board of Directors of Legal Aid Ontario. It will be required to report in respect of its decisions to the Ministry of the Attorney General and through it to the Legislature of the Province. We wish to emphasize once more that the intent of the scheme contemplated by our report is the establishment of an independent corporation invested with a single-minded determination to provide legal services to the public, uninhibited by control or direction in that regard by any agency of government or The Law Society. The Board of Directors of Legal Aid Ontario will be answerable through the Legislature to the public which it serves and which financially supports it.

CHAPTER 4

COVERAGE UNDER THE PLAN

In the foregoing sections we have described the principle features of the Plan and made some comments about the way it operates. We have recommended a major change in the area of control and responsibility and we have suggested in some detail a modified structure for the future. In the following section we attempt to examine and assess the need for the provision of additional coverage and additional services with special reference to the poor.

It will be recalled that the present Plan, with its emphasis on litigation, seems to us to be operating in a satisfactory manner so far as the criminal side is concerned, although we will recommend some changes in this area as well. It is not difficult for persons who are financially eligible to obtain Legal Aid with respect to civil litigation in the higher courts. It is reasonably possible for poor persons to obtain Legal Aid with respect to domestic problems, which may be handled by way of the Civil Courts except the Small Claims Court. A very high proportion of the problems of the poor, unfortunately, with the exception of the domestic problems, are not customarily adjudicated upon by the Courts nor is there a solution to be looked for in that area.

The problems common to all humanity, motor vehicle accidents, domestic disputes, involvement with the Criminal Courts and so forth, are problems with which the courts and the legal profession are daily concerned and the poor have problems in these areas, just as do the wealthy and those of middle incomes. The same approach, the same system and the same solutions are available to all. In the criminal area it is axiomatic that a large proportion of accused persons have backgrounds of poverty and near poverty. Nevertheless, the profession and the courts are quite capable of dealing with the legal rights of the poor in this area and, at least in theory, they are dealt with on precisely the same basis as those of persons higher up on the economic scale. If we may be forgiven for paraphrasing a cliché, the poor man who has the problem of a middle class person is adequately dealt with by the Legal Aid Plan.

Unfortunately, the poor have many problems peculiarly their own which cannot be easily dealt with by the higher courts or by the machinery with which most lawyers are accustomed to work. Even where they share the problems of middle income people, as in cases involving the landlord and tenant relationship, consumer problems and debts, the poor are almost invariably in the position of having to respond rather than being able to initiate. They are tenants not landlords, debtors not creditors, purchasers not vendors. It is not difficult to obtain legal advice and legal assistance when a question of collecting something is involved. It is much more difficult to obtain assistance in presenting a defence. In the one case there is tangible gain in prospect. In the other success does not produce a fund which can be pointed to as proof of the importance of the right preserved. Courses are given in law schools on creditors' rights. No one has yet produced a course on debtors' rights, although the new emphasis being placed on ''poverty law'' in some law schools no doubt represents a move in this direction.

The problem of scale is one that presents great difficulty for the poor man as a consumer; he is rarely able to demonstrate that it is economically ''reasonable'' to

spend money on a law suit respecting a small item which he has purchased. The result of any one suit, however, could create enormous difficulties for the vendor or manufacturer who loses and hence it is thoroughly worthwhile for him to invest money in full defence.

However, in addition to the type of problems discussed, problems which to a degree are shared by all, the poor are constantly troubled by what the middle class might refer to as minor problems but which to the poor are major and troublesome viz, housing standards, welfare benefits, workmen's compensation, unemployment insurance, oppressive consumer credit matters, small claims, etc.

The object, therefore, of any recommendations under this heading must be designed to ensure that those who are eligible for Legal Aid may receive assistance in all of those areas that affect them the most. A legal aid scheme designed to assist poor people must be comprehensive, that is to say it must be capable of providing legal services in the solution of *any* problem faced by poor persons where it would be reasonable for such persons to have the services of a lawyer. In this sense, "reasonable" is not to be judged by comparing the cash value of the legal services with the cash value of the result but by the importance of the matter to a reasonable man in the circumstances of the applicant for Legal Aid.

The ideal solution in this regard would provide that legal aid coverage be available for absolutely all matters that are generally dealt with by lawyers from the most serious to the most trivial. A wealthy client is in a position to obtain a lawyer on his most economically trivial problem if he can find one who will act, but for the most part the economics of the situation provide some inhibiting restraints. In the absence of these economic limitations, a poor person might be placed in a better position than the middle class or wealthy man if services were available without restraint and some safeguards are therefore required. However, care must be exercised to ensure that these safeguards do not have the effect of denying the poor person access to service in those areas that are major to him albeit unimportant to the wealthy.

The traditional test of coverage by comparing what services the "man of modest means" would be prepared to pay for is no longer an apt one. It unrealistically assumes an initiative on the part of the client which he is often incapable of taking and an ability to identify legal problems and the arena in which they will be solved in timely fashion. In order to serve the needs of the poor, a legal aid scheme must contain a substantial element of education for without it the poor may be unaware that those rights may be enforced by law and lawyers.

The scope of coverage of any Legal Aid Plan is ultimately a political decision for our elected representatives. While we may enunciate the obvious, i.e., that the poor should have legal assistance for all of their important legal problems, the government must make the final decision as to whether the public is prepared to pay the cost of this social benefit. The overwhelming response that we have received from the public indicates that an enlargement of the scope of the existing Plan is required.

In this connection it is important to recall that many "poverty law" problems are not primarily legal problems. A Legal Aid Plan should not create expectations which realistically cannot be met by lawyers alone. It must explicitly recognize

that a lawyer cannot solve all or even most of the problems of the poor without the constant co-operation and assistance of other disciplines from which the lawyer traditionally has been remote and removed.

Finally, by way of preliminary comment it is important to note that there are two ways of regulating scope; the first is by legislating areas of availability or exclusion; the second is by building in a discretion over granting certificates that, in effect, limits the scope of an otherwise open Plan.

The existing Plan has adopted both approaches. In some areas it provides for legal aid as of right provided the applicant is financially eligible, e.g., indictable offences, civil actions in the Supreme and County Courts. In others Legal Aid is available "subject to the discretion of the Area Director (or Area Legal Aid Committee)" e.g., some summary conviction offences, juvenile and family court matters, proceedings before administrative tribunals, general legal advice, appeals, etc. In still other cases, Legal Aid is absolutely unavailable, e.g., summary conviction offences where there is no likelihood of imprisonment or loss of means of earning a livelihood; defamation, breach of promise of marriage, and election matters, etc.

It is obviously desirable, so far as finances will permit to legislate the broadest possible area of availability. We feel that a sound Legal Aid Plan should provide legal services for all legal problems and should only exclude matters which by their very nature are better dealt with by other disciplines. Furthermore, it is generally undesirable to provide for discretionary powers to be exercised for the purpose of limiting the scope of the areas covered by the Plan. To provide for discretions in this regard creates situations where in one area of the province Legal Aid is available in certain matters while in other areas it is unavailable. It is only in matters where community input should dictate the nature of the services covered that a discretion should be reserved.

However, to remove discretion completely and to make the Plan universal in scope might place an intolerable burden on the taxpayers. We, therefore, concluded that for the time being it was necessary to limit the scope of the Plan in some areas absolutely while in others a discretion must be exercised. The exclusionary limitations have been kept to a minimum.

LEGAL AID AS OF RIGHT

1. Certificates should be issued as a matter of right to those financially eligible in respect of proceedings or proposed proceedings:

(a) in the Supreme Court of Ontario;

(b) in the court of any county, district or judicial district in Ontario;

(c) in a Surrogate Court;

(d) where the applicant is charged with an indictable offence or where an application is made for a sentence of preventive detention under Part XXI of the Criminal Code (Canada);

(e) in the Federal Court of Canada;

(f) where the applicant is charged with a summary conviction offence under the Criminal Code except offences under Sections 159, 161, 162, 163, 164, 175, 185, 190(4), 191, 193, 194 when he has been previously convicted of any of such offences;

(g) where the applicant is charged with a summary conviction offence under an Act of the Parliament of Canada when he could have been proceeded against for the same offence indictably;

(h) where the applicant is charged with a summary conviction offence under the Narcotics Control Act and under Sections 34, 41 and 42 of the Food and Drug Act;

(i) in a Provincial Court (Family Division);

(i) to an infant;

(ii) to any party to any proceedings under The Deserted Wives or Children's Maintenance Act, The Child Welfare Act, The Training Schools Act, The Parents Maintenance Act and The Reciprocal Enforcement of Maintenance Orders Act;

(iii) to any parent concerned in any application under the above Statutes;

(j) before a quasi-judicial or administrative officer, board or commission otherwise than in an appeal thereto if it is the first such proceeding for the applicant;

(k) for contempt of court;

(l) to those who, while on a Legal Aid certificate, succeeded in a judicial, quasi-judicial or administrative proceeding and are faced with an appeal launched by another party to those proceedings.

2. Certificates should be issued as a matter of right to a person otherwise entitled thereto in matters not necessarily related to judicial or quasi-judicial proceedings but involving the drawing of documents, negotiating settlements or giving legal advice wherever the subject matter or nature thereof is within the scope of the professional duties of a barrister and solicitor.

LEGAL AID BY DISCRETION OF THE AREA COMMITTEE

3. Certificates may be granted subject to the discretion of an Area Committee to persons otherwise entitled thereto:

(a) in an appeal to any of the Courts of the Province or of Canada or to a Judge sitting in Court or Chambers, to the Assessment Review Court regarding the assessment of property that is the residence of the applicant and from that Court to the Judge of the County or District Court and from the decision of that Judge to the Ontario Municipal Board or to a quasi-judicial or administrative board or commission;

(b) before a quasi-judicial or administrative board or commission subsequent to the first application to any such body;

(c) to group applicants subject to guidelines such as we will suggest;

(d) to persons for additional services arising out of a matter for which that applicant has already been granted a certificate;

(e) in any matter referred by the Area Director to the Area Committee.

LEGAL AID BY DISCRETION OF THE AREA DIRECTOR

4. Certificates may be granted subject to the discretion of the Area Director to persons otherwise entitled thereto in any matter:

(a) where a certificate is not available as of right;

(b) where a certificate is not prohibited and

(c) where the power to grant a certificate is not reserved to the Area Committee.

NO LEGAL AID IN SOME MATTERS

5. Legal Aid certificates should not be available:

(a) in proceedings wholly or partly in respect of defamation, breach of promise of marriage, loss of service of a female in consequence of rape or seduction, alienation of affection or criminal conversation;

(b) in relator actions;

(c) in proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty in whole or in part may be payable to the person instituting the proceedings; or

provided that if the applicant is a defendant in any of the matters enumerated in (a), (b) or (c) above Legal Aid should be available as of right if the applicant is financially eligible.

(d) in proceedings relating to any election;

(e) in summary conviction proceedings under a by-law of a municipality as defined in The Municipal Affairs Act or of a metropolitan, district or regional municipality or local board thereof;

(f) in summary conviction proceedings under any Regulation passed pursuant to an Act of the Parliament of Canada or the Legislature of Ontario;

(g) in summary conviction proceedings under The Liquor Control Act (Ontario), and The Liquor Licence Act (Ontario);

provided however that an Area Committee may grant a certificate in respect of any of the matters enumerated in (e), (f) and (g) above if upon conviction there is likelihood of imprisonment or loss of means of earning a livelihood and the accused faces severe economic deprivation.

LEGAL AID AS OF RIGHT

Recommendations 1(a) to (e) inclusive preserve those areas which are now covered by Sections 12(1)(a) to (f) inclusive (excluding 12(1)(e)) of The Legal Aid Act and which provide for Legal Aid as a matter of right. We see no reason for interfering with these areas in any manner.

Recommendations 1(f), (g) and (h) deal with summary conviction offences. Under the present Act, Legal Aid in summary conviction matters is available in the discretion of the Area Director in any summary conviction proceeding only if upon conviction there is a likelihood of imprisonment or loss of means of earning a livelihood. Otherwise Legal Aid is not available.

Currently, therefore, Legal Aid is granted irregularly in summary conviction matters and the discretion given creates a lack of uniformity of application.

We received submissions urging the enlargement of the Plan to include all summary conviction matters. We were told that to some, notably young persons, the impact of being charged with even a summary conviction offence was a very important matter in their lives. If the Plan was designed to provide legal service to the needy, we were urged, then it should not matter whether the incident was legislatively defined as indictable or summary.

On the other hand, it is recognized that to open the Plan to cover all summary matters would result in vast expense. Furthermore, there are many summary matters which by their nature are minor and do not warrant the expenditure of public monies which are needed in other areas. This recognizes the fact that there is a very broad range of summary offences extending from those that are as serious or more serious than some indictable matters, e.g., impaired driving—second offence, to those that are relatively trivial, e.g. by-law offences.

In a sense, it is not possible to catalogue summary conviction offences and on any rational principle, decide which are worthy of defending and which are not. We were driven to the conclusion that the only way in which we could place some curb on summary conviction matters was to draw an arbitrary line, in the case of federal offences, around that group that we considered to be largely economic in character or nuisances. Even at that, we consider that persons charged for the first time with a summary conviction offence coming within the group mentioned should have the right to Legal Aid, if financially qualified, but that after one conviction Legal Aid as of right should no longer be given.

Recommendation 1(g) deals with summary conviction offences under federal statutes other than the Criminal Code and provides for Legal Aid as of right for those offences which may be charged either as summary conviction matters or as indictable offences. If Parliament considers an offence sufficiently serious to be capable of supporting a charge by way of indictment, it makes little difference to the accused whether it is tried in that way or as a summary conviction offence and he may be equally in need of assistance.

Recommendation 1(h) deals with so-called minor drug offences. The offence usually charged as a summary conviction matter under the Narcotics Control Act is that of simple possession and deprivation of liberty very seldom results. Nevertheless, this offence and similar offences under the Food and Drug Act are peculiarly concerned with young people. The civil consequences of a conviction having to do even with a so-called "soft" drug may be severe. This is an area in which, we think, assistance is urgently needed by many young people and we believe it should be theirs by right, assuming financial qualification.

Recommendation 1(i) provides for coverage as of right in Provincial Court (Family Division) matters in a number of cases where either the lives of children may be considerably affected, i.e., juvenile delinquent offences, wardship and affiliation matters or in cases where the applicant for Legal Aid is the infant involved. We feel that proper representation in such cases is important.

Recommendation 1(j) deals with Legal Aid as of right in proceedings before an administrative board or commission on a first application and other than by way of appeal. To an ever increasing extent, the lives of our citizens are being affected by the decisions of administrative tribunals rather than by courts. This is particularly true in the matters which affect the poorer members of the community, e.g., workmen's compensation, welfare, unemployment insurance, etc. At the present time Legal Aid is available in these areas in the discretion of the Area Director and aside from the dangers of arbitrariness and lack of uniformity in application the applicant for aid in these matters is further hampered by the underlying philosophy of the present Plan that Legal Aid should not be granted in "uneconomical" cases. In other words, no Legal Aid is presently available if the legal costs of the service greatly outweigh the financial benefit to be derived by the successful applicant.

In matters involving workmen's compensation, unemployment insurance, welfare and the like the sums sought are often small to a middle class or wealthy person but are large and important to a poor person. If the Plan is to succeed it must recognize that poor persons' problems such as these have special meaning and importance to the poor person and cannot be judged by reference to middle class standards. Accordingly, we recommend that Legal Aid be available as of right to those financially eligible in these matters on a first application. We impose this latter limitation because legislation in these areas often permits repeated applications and to ensure the absence of abuse all subsequent applications for the same relief should be reviewed.

It is difficult to predict the impact of this recommendation on the overall cost to the Plan. At the outset at least, some safeguards are justified. We therefore recommend that the tariff for these matters should provide for a block fee (see note).

What we cannot predict is the numbers of such cases that may be handled under the new Plan. In the year ending March 31, 1973 there were approximately 250 such cases. This, of course, is a surprisingly low figure for this province and this fact supports the argument that the existing Plan is not meeting the needs of the

NOTE: The Annual Report of The Law Society on the operation of the Plan for the year ending March 31, 1973, indicated an average cost per case, including fees and disbursements, for matters before Review Boards was $249.07. Had our recommendations been in force at that time, therefore, we would have thought a block item of $250.00 appropriate.

poor. By making these areas areas of right rather than discretion and by making the Plan more accessible by providing clinics and certificates in lawyers offices, the number of applications in these areas will rise. The increase must be carefully monitored and reviewed.

Recommendation 1(k), dealing with contempt of court, simply transfers from the existing section 13(b)(v) an item that is now discretionary. Very few applications have arisen under this heading in the past but contempt of court may occur under such a great variety of circumstances and may be followed by such serious results that we feel that assistance should be available as of right when required.

Recommendation 1(l) gives recognition to a practice that has been in existence for some time, namely that of granting a certificate to a legally aided client who has succeeded on a litigious matter but who then faces an appeal by his opponent. While all appeals are presently matters of discretion for the Area Committee concerned, we are told that it is a foregone conclusion that a certificate will be granted in these cases. If the original litigation or other application was worth supporting there can be no logic in denying assistance to a client who is faced with the need to defend his success before an appellate tribunal.

ADVICE AND ASSISTANCE

It was apparent to The Law Society and it is to us that there exists among the poor a need for advice and assistance, particularly of a summary nature. From the information provided to us by The Law Society's Hamilton Project, Parkdale, the Law Student Legal Aid Societies, the York Area Director and his staff, among others, it is clear that a great many problems of the poor can be dealt with in a reasonably short period of time on an "advice only" basis. But in order to be effective, this service must be available and accessible.

The manner in which this service is provided is pre-eminently a matter for determination by local Area Committees. As we see it the choices range from the Area Director and his full-time staff, to Civil Duty Counsel on a rotational panel basis, full-time salaried lawyers in local clinics and solicitors acting on a special summary advice certificate with up to two hours of billable time in private offices.

At the outset, at least, the Area Director should employ his staff, Duty Counsel and certificates. If clinics are established no doubt a good deal of this work will be attracted to the clinic. However, the role of the private Bar in this area should never be underestimated. We strongly recommend that the Board of Directors of the new Plan proceed with an experiment similar to the Peterborough Pilot Project recommended by The Law Society prior to the creation of this Task Force. The purpose of the experiment would be to monitor the response and measure the effectiveness of delivering this service by permitting lawyers in their own offices to issue certificates for this service to themselves. Hopefully this would be the ultimate goal of the Plan in this area so that its visibility in the community is identified, not only with its Area Director and clinic, but also with every participating solicitor's office.

This ultimate goal can only be achieved after careful field experimentation. It would be important to measure the effect of advertising, the use of a logo in offices and in the telephone directory to identify those participating and the flow of cases as between private offices and the Plan's facilities. Furthermore, a better estimate

could be made as to the maximum number of billable hours that are necessary to cover the bulk of the cases. At least at the outset, control of the cost of the service will be an extremely important factor. Thus, it may eventually be necessary to limit the number of certificates that a lawyer can issue or an applicant obtain for these services in order to provide economic controls and control of abuses.

Although summary advice will satisfy the most apparent and pressing need, it may well be that additional assistance of a lengthier and more complicated nature will be required. This service too should be available as of right. However, it should be obtained by means of a standard form of certificate. Without getting into the drafting of the legislative or regulative requirements, it might be that in this instance a letter ought to be submitted to the Area Director by the solicitor outlining the requirements for the applicant's extended assistance, the nature of the documents to be drawn or the negotiations to be undertaken. Once again, the principle of control will be an extremely important feature of this aspect of the Plan.

LEGAL AID BY DISCRETION OF THE AREA COMMITTEE

Throughout the report we have endeavoured to increase the influence of the lay community at the area and provincial levels. In addition to authorizing those appeals that are discretionary, as is the case under the present Plan, we think it to be a peculiarly appropriate function for the newly constituted Area Committees, conscious of local needs and conditions, to decide on such matters as second or subsequent applications to boards and tribunals whose procedure may permit repeated applications and to determine which matters being pressed by groups are sufficiently important and which groups are sufficiently representative to warrant the assistance of Legal Aid.

Recommendation number 3(a) follows the existing practice in appeal matters now available under Section 14 of the Act. While at first blush it might appear that such decision would be peculiarly suitable for lawyers to make, we have been impressed in the course of our inquiries by the contribution that laymen do make when dealing with these matters in an Area Committee. Lawyers on these committees have repeatedly advised us that the non-legal common sense approach that laymen can often provide is invaluable. This function should therefore continue to be performed by Area Committees and may perhaps be better performed by the committees as newly constituted. The obvious drawback is the delay that is the occasional result of the difficulty in convening a committee, particularly in smaller areas where appeals are infrequent. The time limits on appeals are in most instances so brief and so peremptory that even privately financed appeals are frequently launched before there has been an opportunity for full consideration. Such representations as we have received from the Court of Appeal have indicated that problems of this nature are readily overcome by administrative means. We think the advantages obtained by bringing lay judgment to bear on these matters at least offset the slight additional delay that may result.

Recommendations 3(b) and 3(c) again follow the approach which we perceive is adopted by the present statute, namely, of assuring that matters where local lay or professional judgment would be useful, are dealt with locally in the Area Committee. There are additional reasons why Area Committees should play a large role in granting certificates in group applications which are discussed subsequently.

Altogether this increase in the workload of Area Committees causes us some concern not only because it is difficult to hold meetings in some geographical areas but also because the members are presently giving their time without compensation. The benefit of seeking local wisdom, however, is extremely important and some adjustments regarding compensation may be necessary. In time, some patterns should develop on a local basis which will indicate the type of case where the local Committee will exercise its discretion in favour of granting a certificate. This may tend to reduce the overall workload of the Committee.

LEGAL AID BY DISCRETION OF THE AREA DIRECTOR

Apart from matters where Legal Aid is prohibited, we have already set out those many matters where Legal Aid should be available as of right and certificates issued by the Area Director or practicing members of the local Bar, and those other discretionary matters where certificates should only be issued by the Area Committee. It is our view that all other matters should be within the discretion of the Area Director. He is, by training, experience and overall view, the person best equipped to discharge this function. Furthermore, the workload here may be voluminous, routine and time-consuming. Apart altogether from the difficulties that may exist in convening meetings at very short notice, it would constitute an unnecessarily burdensome duty for the Area Committee wherein their unique talents would be largely wasted. For example matters for the Area Director's discretion would include summary conviction offences under federal statutes which cannot proceed by way of indictment and all summary conviction offences under provincial statute.

NO LEGAL AID IN SOME MATTERS

The matters outlined in Section 15(a)(b) and (c) of the Act have been excluded from the outset without apparent hardship. This is particularly so if one contemplates Legal Aid for the initiator of such proceedings. If a person is a defendant, however, he should be provided with assistance to answer. These cases are very rare and should impose no financial burden on the Plan.

We are of the view that by-law offences, regulation offences and liquor offences should be entirely excluded. The type of subject dealt with by by-law or regulation is more regulatory than penal in nature. Often such "offences" are nothing more than licence fees. If some line is to be drawn, this is the place to draw it.

Liquor offences are difficult to deal with. Having regard to the economic nature of many of the offences, e.g., selling liquor to minors and bootlegging and to the apparently insoluble nature of others, e.g., repeated drunkenness in a public place, the Plan should not be asked to bear what would be substantial expense in these areas. Again, as a matter of policy, the line must be drawn here.

Having stated these views we acknowledge that they run counter to the idea previously expressed, namely, that a person financially eligible should be given the benefit of Legal Aid in respect of any matter important to him. We must recognize, however, that the large volume of cases that would result if certificates were to be readily granted for by-law or regulation offences would overwhelm the Plan both financially and in terms of available manpower. We have therefore

drawn the line at that point but have left a closely circumscribed area of discretion which may be exercised by the Area Committee to take care of the very exceptional case in which the result of a successful by-law prosecution might be economic disaster for the person convicted, e.g., in the case of a by-law prosecution leading ultimately to demolition of a building in which the life savings of a person of modest means had been invested.

LETTER OF OPINION

Under the present Regulations, when a certificate has been issued in a civil proceeding none but emergency steps are to be taken until the solicitor accepting the certificate has furnished to the Area Director his written opinion that it is reasonable under all the circumstances for him to proceed and the Area Director has authorized him to do so. We feel that this sort of proceeding is a desirable control and should be retained, though in modified form. Consistent with our attempt to decentralize the process of issuing certificates and to expedite the delivery of service, the new Act and Regulations made under it should provide that in civil matters involving more than advice and assistance up to two hours of billable time, a letter of opinion should continue to be provided to the Area Director. However, the solicitor should continue to act unless and until the Area Director revokes the certificate. That revocation is of course subject to appeal.

CHAPTER 5

THE DELIVERY OF LEGAL SERVICES

In considering alternative delivery modes we have found it worthwhile to examine some of the experiments which have been developed in this province both on an "official" and an "ad hoc" basis.

PARKDALE COMMUNITY LEGAL SERVICES

Parkdale Community Legal Services was established by the Faculty of Law at York University, upon the invitation of the Parkdale "community" to provide clinic services there. Its director and four members of its law staff are members of the Bar. It has trained para-legal personnel, who, under the direction of the professional staff, provide legal assistance and advice. It has been outstandingly successful in making use of the services of these men and women who, drawn from the community, relate well to the clients and have acquired specific skills directly applicable to one or more of the principal areas of the clinic's concern. It is further staffed by a large corps of students, who work in the clinic as part of their academic programme.

There is no doubt that Parkdale has responded effectively to the legal needs of the community it proposes to serve. It is difficult, however, to generalize from the Parkdale experience for a number of reasons. In the first place, it is pre-eminently an institution with a strong *academic* commitment to "poverty law" and the provision of legal services on a clinical basis. It is to some extent funded by York University. Its relatively slim professional resources are augmented by a large corps of committed students who are enrolled in a credit programme. The demands upon it are limited by virtue of its policy refusal to accept cases to which the existing Legal Aid Plan already applies. In addition, the rules of The Law Society respecting advertising were modified to permit the Parkdale experiment to occur and develop. Notwithstanding its many unique features, Parkdale may nonetheless be taken as a model for its efforts in the provision of general legal advice and assistance on a continuing basis, its community legal education programme, its group representation programme, and its determination to meet the recognized or unrecognized needs of the community it serves.

LAW STUDENTS LEGAL AID SOCIETIES

Each of the legal aid societies at the law schools of Ontario operates some kind of clinic programme under the aegis of its faculty and the Ontario Legal Aid Plan. The clientele of these clinics derives in part from the Area Director who usually refers cases in which Legal Aid is not available, and in part from the general "walk-in" response of the community in which the clinic is located. In some cases social welfare agencies refer clients to the clinic. One of the largest and most highly developed programmes is that of the Students Legal Aid Society of the University of Toronto. This Society operates some seventeen clinics in Metropolitan Toronto which handle approximately 6,000 cases a year. These cases run the gamut from legal advice and assistance to Small Claims Court and tribunal work. Our summary examination of the university programme indicates that it is chronically underfunded, that because of its student base it is difficult to obtain continuity from year to year and over the vacation period, that the service while well-

intentioned and no doubt satisfactory is naturally of unpredictable quality and subject only to fitful professional control. The university experience does, however, illustrate a profound need. In terms of meeting this need, it must be observed that there are only five university cities in Ontario, and that not all the universities are physically or financially equipped to provide the very extensive services currently made available at the University of Toronto.

THE PRIVATE FIRM EXPERIMENT

From January, 1972, until June, 1973, a large Toronto law firm maintained a neighbourhood clinic in the Kensington area of Toronto. The scheme established has been carefully analyzed in an article in Chitty's Law Journal, but it essentially involved the opening of a branch office in the community, staffed by a member of the firm with both legal and clerical support staff. It was hoped that by this method a legal presence could be established in a community not unlike Parkdale but on a private enterprise basis and with the opportunity to utilize the expertise of a large downtown office. The office in its period of occupation served some 700 "clients."

The experiment, though highly credible, was not apparently in the view of either the firm or the actual participants, a success for a number of reasons. In the first place, the neighbourhood clinic did not meet the expectations of its founders and generate "cases" for which the expertise of the downtown firm was in any way suited. Although the office was available to act in certificate matters, it quickly became apparent that the project was uneconomic. The proponents of the scheme concluded that apart from legal advice and assistance the major needs of the community were not legal representation *per se*, but rather "preventative law" and legal education: in short, the kind of services that could not be provided economically by the private Bar but which might be served by para-professionals under the direction and control of lawyers.

THE HAMILTON PROJECT

Pursuant to recommendations contained in the Community Legal Services Report, the Legal Aid Committee established the Hamilton Pilot Project. The scheme was to establish an office in an existing community known as Victoria Park in Hamilton, at which a rotating panel of private lawyers would be available at stipulated times, to give on-the-spot advice. In the event that the advice generated a continuing problem or a Legal Aid certificate, the applicant would be permitted to retain the services of the advising lawyer through his downtown office or select another lawyer from the ordinary Legal Aid roster. Approximately 80 lawyers in the Hamilton area volunteered initially to staff the experiment.

In fact about 25 lawyers were regularly required in the operation of the clinic. The project was supported by a reasonably extensive advertising campaign, and there was no doubt that the establishment of the clinic in a community with existing social service organizations and adjacent to them was effective. An average of 93 persons attended the clinic each month. The vast majority of problems encountered at the clinic required only oral advice. Notwithstanding the very good work that was undoubtedly done by this clinic, and clinics based on that model operated by the Area Committees in Ottawa and Toronto, a number of problems are raised by the experiment. In the first place, there is doubt as to whether the private Bar is in a

position to establish sufficient rotating clinics to meet the existing need in large urban centres. We were told by representatives of the Hamilton Bar that in order to assure adequate coverage, approximately four such clinics would be required with comparable staff. Perhaps because of the sporadic nature of participation and the lack of a continuing professional presence, the project seems effective only when established as part of an *existing* community social welfare organization. It therefore goes no great distance to meet the needs of less sophisticated urban communities. A similar attempt in Hamilton which was not supported by such a liaison apparently failed. In addition members of the Hamilton Bar have indicated to us that they frequently lacked the expertise to deal with the problems that applicants brought to them, and that in their judgment trained para-legal personnel under appropriate supervision might be better equipped. Perhaps most important, we have reservations about the ability of an *ad hoc* rotating clinic to attract and deal with the existing clientele. Twenty-five clients interviewed per week out of a community fixed at 25,000 seems an inordinately low response compared to other experiments. Also the data creates some doubt about the effectiveness of transferring a "continuing" client into a downtown office.

PARA-PROFESSIONALS IN CLINICS

Lawyers in practice have long understood the utility and economy of employing legal para-professionals to assist in many aspects of private practice. For the most part, these valued employees were trained by the lawyers themselves or by senior clerical staff. In more recent times, however, many of our community colleges have offered courses to legal para-professionals which are primarily designed to prepare them for employment in the private sector. We have examined the curricula and have spoken with instructors from many of our community colleges and we were impressed with the manner in which they have been able to provide comprehensive courses staffed by able personnel for these purposes.

We are satisfied that a properly trained and supervised para-professional has an important role to play in the delivery of legal services by clinics. Because many of the problems that will be brought to the clinic may only have a marginal legal component, the para-professional may be better able to deal with them than a lawyer. In addition, para-professionals may be used to assist in Small Claims Court, the Family Court office and no doubt in many other respects under the new Plan.

If opportunities for employment are created by the new Plan for para-professionals in the poverty law area, we are confident that our community colleges will respond to the challenge of providing academic training for such persons. Such programmes should be developed by collaboration between The Law Society, the Board of Directors of Legal Aid Ontario and the community colleges.

RECOMMENDATIONS

We propose that Legal Aid Ontario be authorized, subject to the general guidelines hereinafter set out and such more particular guidelines as the Board of Directors within this context may from time to time determine, to establish and fund neighbourhood legal aid clinics. We think that the following principles are appropriate and consistent with the need:

1. A neighbourhood legal aid clinic may be established in any community or place on the terms and conditions established by the Board of Directors.

2. Area Committees will be encouraged to make recommendations to the Board of Directors regarding the advisability of, and the terms and conditions for, the establishment of neighbourhood legal aid clinics in their areas.

3. The Board of Directors after consultation with the Area Committee will establish the staffing requirements, the special projects and priorities if any, and the funding of each neighbourhood legal aid clinic.

4. The appropriate Law Society Regulations and policy should be amended so as to permit each clinic subject to the approval of the Board of Directors, to advertise the availability of its services. We would propose no restrictions on advertising of an institutional type but no advertisement would include touting for individual staff members of the clinic, or would in any sense contrast the breadth of services or their quality as between the clinic and the private Bar.

5. In staffing clinics it shall be permissible for the Board of Directors to appoint to each neighbourhood legal aid clinic salaried solicitors, articling students, para-professionals, social and other professional workers and clerical staff. Regardless of the mix of staff employed, every clinic will be under the immediate direction of a lawyer.

6. Neighbourhood legal aid clinics will be obliged to receive applications for Legal Aid certificates. By appropriate notice and oral advice each applicant must be advised of his right upon the provision of a certificate to seek legal advice or counsel from a member of the private Bar listed on the Legal Aid roster, as well as from the clinic staff.

7. Consistent with our aim to establish a flexible Plan, any neighbourhood legal aid clinic may be given special priorities in its community, subject to consultation between the Area Committee and the Regional Director. Such priorities might require restrictions on the kind of work for which the clinic will be available, emphasis on particular clientele or specialized projects such as community education or even simple advice and assistance. Generally speaking, however, neighbourhood legal aid clinic staff will be encouraged to give priority to requests for legal advice and assistance, community group advice and representation and the development of community education programmes.

8. Subject to any limits established as set out above, salaried solicitors on the staff of the neighbourhood legal aid clinic will be entitled to accept and conduct an applicant's case without restriction. Para-professionals and articling students may, subject to the direction of the clinic director, accept and conduct cases in tribunals in which they are entitled by law to appear.

9. Because of the priorities which are hereby proposed or which may be established by the Area Committee and the Regional Director for the neighbourhood legal aid clinic, the Regional Director and the Area Committee in consultation should also establish guidelines for and strictly control the case load of the staff professionals and para-professionals.

10. To reduce the case load upon each professional or para-professional in a neighbourhood legal aid clinic, the clinic director should be instructed to encourage applicants to consult the private Bar in traditional areas of service. We think particularly that divorce, matrimonial work and conventional criminal and civil litigation should continue wherever possible and where the applicant so desires to be conducted by the private Bar.

11. Each neighbourhood legal aid clinic will be encouraged as soon as possible after its formation to establish a Community Advisory Board comprising both lawyers practicing in and lay members residing in the community that the clinic is designed to serve. The function of such a Board would be exclusively advisory and it is not intended that it should exercise any degree of control. In small communities there may be no need for such a Board, but in metropolitan areas especially where there may be more than one clinic such Boards can assist in determining community needs.

12. The clinic director will report at regular intervals to the Area Committee and through the Area Director, to the Regional Director upon the operations and functions of his clinic. The clinic director will have the right, should he deem it necessary, to communicate directly with the Board of Directors of the Legal Aid Plan.

13. The development of student legal aid societies is dealt with elsewhere in this report. However, the expanded coverage contemplated for the Plan would not necessarily in all cases eliminate student legal aid clinics. It should be within the power of the Board of Directors, subject to consultation with the Area Director and the appropriate law school Dean, to constitute a student legal aid society or a branch thereof as a neighbourhood legal aid clinic and to provide the appropriate funding and staffing, and establish the terms and conditions of its operation.

14. The Board of Directors of Legal Aid Ontario should be authorized to receive applications for funding, and grant funding where appropriate, to existing clinics or neighbourhood law offices established by private firms or institutions under such terms and conditions as the Board of Directors in each case considers appropriate.

15. In conjunction with The Law Society of Upper Canada, the Board of Directors of Legal Aid Ontario should develop a programme to be conducted through the community colleges, in conjunction with the Bar Admission Course or elsewhere for the academic training of, and through existing neighbourhood legal aid clinics, for the practical training of law advocates or para-professionals.

16. Following consultation between the Area Committee, the Regional Director, the clinic director and the county or district Bar Association, the neighbourhood legal aid clinic may establish a roster of lawyers engaged in private practice who may work in the clinic or conduct its cases on a rotating basis. It is quite conceivable that in some circumstances this may be an extremely desirable mode of delivery that should be adopted as a support for and to provide depth to the staff of a neighbourhood legal aid clinic.

We may summarize briefly the advantages that we think will result.

1. The development of complementary delivery techniques will ensure that the possibility of the poor being unaware of their legal rights, unaware of Legal Aid or unaware of the functions that lawyers can perform for them, is minimized.

2. Whether the needs of the community are best served by a neighbourhood legal aid clinic, a student legal aid society, a private enterprise neighbourhood law office, or the traditional fee for service programme, or any combination of the above, each community will have an opportunity to participate through its Area Committe in the selection of the appropriate delivery service for that community.

3. The practicing Bar will continue to make a substantial contribution to the work of Legal Aid.

4. The substantial bulk of Legal Aid work (in some areas as expanded by the recommendations of this report) will continue to be performed by the private legal profession. The role of other delivery systems will be complementary.

COSTS OF DELIVERY

It goes without saying that any examination of alternative delivery techniques which have been proposed, extending from "fee for service" to salaried clinics, must include some examination and comparison of the cost to the public of each kind of service. This is desirable to ensure not only that there is some reasonably reliable way of estimating the total costs of the proposed operation, but that adequate costing is available to assist the officers of the Plan in selecting the appropriate mode of delivery for each community and perhaps more important for delivery of various types of service.

COSTS OF FEE FOR SERVICE

The existing Plan with certain minor and local exceptions is theoretically amenable to an accurate estimate of cost on a case basis. The private practice lawyer upon receipt of a certificate simply does the work required and submits a bill to the Plan, which is taxed by the administration and paid. On this basis in 1973 it can be said that $8,454,000.00 was spent on Legal Aid fees and disbursements for individual cases or advice provided by the private Bar. $1,158,000.00 was spent on Duty Counsel fees and disbursements.

It is also relatively easy by an examination of the tariff and an analysis of accounts submitted by the practicing Bar to the Plan over a given period in various categories to establish roughly the cost for a case in each category of service. Thus, the tariff for undefended divorces together with the routine disbursements normally attached should in theory show the cost of providing such a service to the Plan.

This approach is simple and therefore attractive but it does not by itself fairly reveal the true cost of "fee for service" to the Plan and therefore to the public. The certificate granting process and the resulting checking of accounts paid add additional costs which do not accrue to paying clients of the private Bar. For example, a private client deciding to consult a solicitor will not find his ultimate account with that solicitor increased by the mode of retainer, or by the mode of determining his account. On the other hand, under Legal Aid a client seeking a solicitor must normally attend upon an Area Director's office and submit to a

C.S.S. interview before the initial interview with his retained solicitor is conducted. When the matter is completed the solicitor's account is submitted to the Provincial Office, where it is taxed and paid by the administration. In due course, if it is not collected the administration's collection department attempts to do so. In addition to the above, the scheme requires substantial administration provided by the Provincial Director's office. All of this costs money. It follows clearly, that the cost of an undefended divorce to the public is not merely the tariff fees plus the disbursements.

At our request, accountants were asked after examination of the records of the Legal Aid Plan to determine the "all in" cost of various services provided by the private Bar to the public. Acceptable accounting techniques were developed to determine the portion of Provincial office and Area office administrative costs which should be borne in each case. The formula used is fully set out in the Woods, Gordon Report. While there may no doubt be inequities in determining the proportion of such costs to be borne among the various areas across the province, we are satisfied that a much more accurate estimate for the *actual* public cost for the service provided by fee for service is thereby obtained.

On this basis, the average cost per case in five general categories is as follows:

1. Criminal	$261.87
2. Civil	$343.92
3. Legal Advice	$ 77.70
4. Duty Counsel (Criminal)	$ 14.37
5. Duty Counsel (Civil)	$ 14.10

A breakdown of various categories of civil work with the appropriate administrative component is as follows:

Undefended Divorces	$569.00
Defended Divorces	$683.00
Other Matrimonial Work	$236.00
Family and Juvenile Court Work	$229.00
Civil Litigation in all Courts	$589.00

It should be noted that in the divorce cases approximately $130.00 represented disbursements paid either to the Provincial Government, for initiating or completing process, or to the Official Guardian. Disbursements in other categories of cases were, of course, markedly less.

A breakdown of the civil litigation figures produced the following case costs:

County or District Court	$ 240.00
Supreme Court of Ontario	$ 542.00
Court of Appeal	$ 531.00
Supreme Court of Canada	$1,507.00

Most of the litigation examined was in the Supreme Court of Ontario. In this category disbursements, no doubt including the cost of initiating process, examinations for discovery, police reports, etc., comprised more than one-third of the total bill. It should be noted that divorce can only be dealt with in the Supreme Court of Ontario.

In reviewing these figures, an experienced practicing solicitor would recognize immediately that the cost of litigation under the Plan, even including administrative costs, is in the majority of cases substantially less than the cost that is normally charged to the paying client. Even acknowledging that Legal Aid has transformed non-paying cases into paying cases for the private Bar, these figures provide support for the proposition that since the commencement of the operation of the Plan the private Bar participating in fee for service has made a significant charitable contribution.

Even with the appropriate allowance for administrative costs at both the provincial and area levels there are two other elements in the provision of "fee for service" under Legal Aid which require comment.

BLOCK FEE TARIFF ITEMS

A number of items of service are provided by solicitors on a block fee tariff basis. We have no doubt that the greatest care has been taken by the Legal Aid Committee in assuring that the block tariff item for each service, where it exists, closely approximates the fair and normal averaged cost of such service. The block tariff item, however, undoubtedly causes inequities: in the first place, it may be inequitable to the public in that a solicitor is compensated in individual cases on a higher basis than the time expended to provide the service warrants; in the second place, in those instances where the tariff item is low, the profession is unfairly discouraged from responding and providing service to clients whose problems fall within the category.

BILLING THE PLAN

After the fee for service work has been completed the solicitor submits to the Plan a bill in normal form disclosing the nature of the work performed and the number of hours required for its performance. The administrators of the Plan then "tax" the bill. In the course of this exercise they may disallow items where they are satisfied that the work has not been done, or that its complexity or the hours devoted to it have been overstated.

While a copy of the solicitor's bill is normally required to be forwarded to the client, he will usually have no interest in the administrations' determination of the propriety of the account itself because, of course, he is legally aided. In approaching the taxation of the solicitor's account therefore, the administration is forced in virtually all cases to rely upon the solicitor's report of the work and in addition apply *ad hoc* norms or standards respecting the complexity of the case and the amount of time that would "normally" be expended in its preparation and conduct. Inherent in this system there is a risk that the scope and extent of the work will be overstated by the solicitor, and a more substantial account than is desirable be approved for payment. On the other side, the norms of conduct developed by the administration no doubt in many cases lead to compensation of the solicitor on a less than equitable basis.

We simply observe therefore, that the costs of fee for service, while accurately summarized above, may not in all instances and in all areas of service represent the "fair cost" of that particular service either from the point of view of the Plan or from the point of view of the retained solicitor.

COSTS OF CLINICS

The alternative or complementary mode of delivery of legal services that was most frequently encountered in submissions made to us, was of course the Legal Aid "clinic". The clinics proposed varied from clinics made up of "rotating" members of the private Bar on the one hand to clinics in which salaried solicitors are hired by the Plan. Both models will require some clerical support and may or may not utilize para-legal personnel. It has proven extremely difficult to cost this alternative delivery mode in any satisfactory way for the reason that the clinic experiments in Ontario as well as elsewhere have not produced consistent accounting data and have not existed in most cases for sufficiently long periods of time to ensure the adequacy of accounting tests. In addition, each clinic of which we have knowledge has operated on a substantially different basis and has exhibited distinguishing features in choice, administration, case load, personnel, or other features essential to accurate assessment.

It is not impossible, however, to draw general conclusions about some of the costs involved.

A. CLINICS STAFFED BY PRIVATE LAWYERS

Of the clinics staffed by private Bar lawyers that have been developed in Ontario, principally at Hamilton, Ottawa and Toronto, the most satisfactory and most fully documented example is the Hamilton Civil Advice and Assistance Project, the details of which have been discussed earlier.

The rotating professional staff of the Hamilton Clinic were required to render any necessary legal advice to an inquiring applicant, and to provide any summary legal assistance necessary to implement the advice given in non-certificate matters. In the event that extensive legal assistance was necessary the function of the staff was to assist the applicant to make a formal application for submission to the Area Director in the ordinary way. A full time Advisory Liaison Officer was employed to co-ordinate the rotating Bar, to give summary advice of a non-legal type (which included, where appropriate, reference to suitable alternative social welfare agencies) and to assist in the preparation of formal applications for certificates. Some clerical staff was provided on a part time basis.

A breakdown of the work performed in the clinic showed that 61 per cent of the applicants required advice only, 14 per cent required advice together with follow-up and 25 per cent required assistance in making traditional Legal Aid applications. A substantial number of telephone inquiries were also dealt with, usually by the para-legal liaison officer on the staff of the clinic. The time required to provide "advice only" averaged 19 minutes. The time required to provide "advice and follow-up" was 43 minutes.

The participating solicitors were compensated under the Legal Aid Tariff on a Duty Counsel basis. Those responsible for the operation of the Hamilton Project in reporting to the Legal Aid Committee determined that the average cost of service to each applicant was $17.92. After review by Plan administrators this figure was adjusted down to $16.57.

We are not satisfied that either figure accurately reflects the true cost of the service on a case basis. We observe that the determination of cost was made notwithstanding that in many cases participating lawyers, for reasons that are not

clear, did not invoice for follow-up costs; the result is that the cost per applicant is probably understated. In addition, the reported administrative costs used to determine the average cost per applicant included only the salary of the Advisory Liaison Officer and the telephone costs. No allowance was made for the start-up expenditures of the project or for occupancy of the premises, furniture, advertising, stationery and supplies, the part time secretary or the services of the para-professional who in the case of the Hamilton Project was provided without charge by the Victoria Park Neighbourhood Community Organization. All these charges represent an essential part of the facility.

Our accounting advisors have carefully reviewed the relevant data and determined that the true cost of the project was $29.83 for the ''advice'' or the ''advice and follow-up'' provided to each applicant.

B. TORONTO AND OTTAWA CLINICS

In these rotating solicitor clinics no follow-up service was permitted: the function of the solicitors attending was merely to provide summary advice and to complete applications for Legal Aid certificates in the normal way. The cost of the solicitor's services on a per case basis at Toronto was $11.88 and at Ottawa was $10.35. The solicitors were paid according to the Duty Counsel Tariff. Space was provided free by local community agencies or groups and there was no permanent part time staff whatever. We have concluded that the service cost figures given cannot be taken to be representative of the real costs of providing rotating duty clinics on a broader basis. We have no reason to believe that if the Toronto and Ottawa clinics provided the services that were required to be provided at Hamilton, and maintained equivalent administrative staff and facilities the costs would markedly differ from those that have been determined to be the real costs of the Hamilton Project.

C. STUDENT LEGAL AID CLINICS

While each law student society maintaining a Legal aid clinic in its community attempted to provide to us some financial data, we are not satisfied that any useful analysis of it can be made. The principle reason is that of course, the provision of the legal aid service was undertaken almost invariably by law students who were not paid and whose value cannot be adequately or fairly costed as against the cost of providing private Bar or salaried solicitors in their place. In addition, support facilities were frequently donated by community organizations or by the universities themselves.

D. THE KENSINGTON STOREFRONT OFFICE

Reference has already been made to this project of a large Toronto law firm. The costs of maintaining this office in the fiscal year 1972 were $47,479.00. The rented office space was located on the second floor of an office building in the downtown sector of Metropolitan Toronto. The permanent staff included one full time lawyer, a para-legal assistant and a secretary. The actual costs for 1972 are greater than that establishment would warrant by virtue of the fact that in August, 1972, the para-legal assistant resigned and was replaced by a second lawyer whose salary for the balance of the year is included in overhead. The overhead figure provided does not include bookkeeping or accounting costs, nor the cost of three students-at-law (borne entirely by the downtown firm) and three social workers who served on a volunteer basis.

It can perhaps be concluded that this clinic provided a service facility staffed by two professionals (a lawyer and a para-legal person) at a rounded total cost of $50,000.00 per annum in 1972. Assuming 1500 ''billable'' hours each per year, the cost of the service is approximately $17.00 each, per hour.

E. PARKDALE COMMUNITY LEGAL SERVICES

The situation of this clinic is so unusual, as has been noted elsewhere, that it is again difficult to draw any cost conclusions from its experience. We have been provided with a copy of its budget for the year commencing April 1, 1974, however, and from it the following figures based on 1973 experience can be extrapolated for the purpose of comparison:

Associates Director's Salary	$13,500.00
Three Staff Lawyer's Salaries	33,000.00
Lay Advocates (4)	29,500.00
Office Manager	7,600.00
Secretaries (3)	19,000.00
Fringe Benefits	6,650.00
Intake Worker	5,200.00
Maintenance and Utilities	14,000.00
Maintenance Staff	2,500.00
Rent	7,800.00
Equipment Rental	500.00
Publicity and Travel	2,500.00

This clinic provided a service facility to its clientele staffed by eight professionals (four lawyers and four para-legal personnel) at a rounded total cost of $142,000.00 based on 1973 costs. Again assuming 1500 billable hours each year, per professional, the cost of the service is approximately $12.00 each per hour.

In addition to difficulties it has in common with other clinics and other delivery modes, the Parkdale experience is subject to two further imponderables. The entire salary of the director is paid by York University in view of the clinical nature of the undertaking. The extent to which the director personally conducts cases or performs work for clients or acts as counsel or advisor to the professionals and students engaged cannot be known or valued. Second, the fact that a great deal of the work is performed by approximately 20 students must obviously have some effect upon the way in which the professionals spend their time and no doubt, give them some sort of ''leverage''. Any per hour or per case costs extracted from this undertaking must therefore be viewed with particular caution.

Subject to the above, a number of tentative conclusions can perhaps be drawn from this brief analysis of comparative cost of the various delivery techniques already existent in Ontario. In making these observations, it should be emphasized that cost comparisons reveal nothing whatever about the quality of the service provided by any technique; that issue must be determined by other considerations. Throughout it has been assumed that an identical service of good quality is provided by each delivery technique.

1. The Woods, Gordon Report includes a survey of annual overhead costs of a representative sample of Ontario lawyers and law firms. These overhead costs

(which do not include the salary or partnership share of any members of the Bar) run from approximately $16.00 to $25.00 per billable hour. The number of billable hours was in each case selected by the lawyer or law firm in question or averaged. For the province, the average was just under 1200 hours. The survey shows that the lower overhead figure tends to be found when lawyers practice by themselves or in firms of up to five members. Higher overhead costs are found in large firms. The size of the community in which the office was located did not appear to be a significant factor.

2. Assuming the matter is one of requiring advice, the hourly rate attributable to the lawyers in each delivery system can be summarized as follows:

Fee for service in private office	$27.50 per hour;
Hamilton Rotating Clinic	$27.50 per hour;
Kensington Clinic	$17.00 per hour;
Parkdale Clinic	$12.00 per hour.

Two points should be noted:

(a) The Kensington and Parkdale Clinic figures assume that lay advocates or para-legal personnel will be providing advice.

(b) Fee for service by the private Bar and the Hamilton Project do not take account of administrative costs at the provincial level. It has been assumed that if clinics are brought within the Plan, provincial level costs will be required to effectively administer them. In short, one provincial level administrative cost may duplicate the other.

3. Advice costs on a case basis determined on a maximum time allotment to each case of 1-1/2 hours can be summarized as follows:

Fee for service in a private office	$41.25
Hamilton Rotating Clinic	$29.83
Kensington Clinic	$25.50
Parkdale Clinic	$18.00

Again the following matters should be noted:

(a) The Kensington and Parkdale figures assume that advice will be given equally by para-legals.

(b) The Hamilton clinic figure is based on an *average* time allotment per case, the other examples assume utilization of a full 1-1/2 hour period for each case.

4. Both the hourly cost and the case cost obviously are reduced where para-legal personnel or lay advocates may be used to provide advice.

5. The case cost increases at salaried clinics (such as Parkdale or Kensington) if the clinic services are not fully utilized. Put another way, the fee for service and the Hamilton Project delivery techniques do not incur advice costs if the advice service is not requested.

6. Neither fee for service in the private law office nor the Hamilton Project have the potential for reducing costs to the Plan in other than ''advice'' and ''advice and follow-up'' matters. Existing Plan services in criminal and civil litigation and the contemplated extension of the Plan to cover a variety of continuing litigious or representational matters can be dealt with more economically only via the salaried solicitor clinic delivery technique, unless ways are found by private firms to make further use of para-legal personnel.

7. There is no basis for comparing the provincial level administrative cost or the area administrative cost created by the development of salaried lawyer clinics as against the savings that may be achieved by the consequent inapplicability of the certification and account taxation processes.

8. Any attempt to reduce the cost of the Hamilton Rotating Clinic by introducing para-legal personnel or lay advocates could be entirely or in part offset by the necessity of providing full time professional supervision for such personnel.

9. Advice costs on fee for service in the private law office model or the Hamilton Rotating Clinic model must continue to reflect average overhead costs borne by the private Bar; consistent with our view that Legal Aid is not a charity for the client and is not the provision of a charity by the solicitor, it should not be assumed that fee for service in private law offices or rotating clinics can be provided at less than the solicitors normal overhead figure plus some reasonable amount for his professional services. In particular, it will be noted that the overhead of a member of the private Bar participating in a rotating clinic continues to run even when he is absent from his regular office on the business of that client.

10. There is no basis for making a cost comparison on the efficiency with which a fee for service solicitor in his own office can dispose of a problem as compared with the efficiency that may be exhibited by a clinic solicitor or lay advocate in the same matter. It has been said, that in a number of poverty law and administrative or quasi-judicial matters the experience of the clinic solicitor or lay advocate will enable them to dispose of the problem more quickly than their colleagues in the private Bar to whom many of the issues may be foreign or novel. This consideration, if such it is, cannot be evaluated on a cost basis.

It seems to us impossible to draw hard and fast conclusions but we think the data briefly looked at above and found in more detail in the Woods, Gordon Report should be of assistance to Area Committees and to the Board of Directors in deciding on particular modes of services in various places from time to time. Quite obviously, the per case cost of a clinic will mount rapidly if the service is not fully utilized. Similarly, the per case cost of poverty law matters will increase if they are handled by private offices which do such cases very infrequently and are not knowledgeable about them or expert in their management.

Estate and real estate matters are economically handled by many private offices because the routine nature of much of the work and the volume of business makes it possible for a large proportion to be done by para-professionals with minimum supervision by lawyers. Similarly, a clinic which handled a large demand in such fields as workmen's compensation claims or welfare appeals could have most of the work done by para-professionals with a minimum of supervision by lawyers. It may be that either facility could equally well manage the

preparation of litigation falling into one of the common divisions, e.g., simple collections or undefended divorces. Litigation of a more complicated type could in all probability be better handled in a conventional office because of the high proportion of individual judgment required and the difficulty of having much of the work done by other than lawyers. In all of the above, of course, service of a high quality is assumed. No mode of delivery should be accepted by an Area Committee or by the Board of Directors, nor could it be justified, if it was obviously going to be incapable of producing and maintaining such a level of service.

One final imponderable exists that is incapable of measurement and that is the preference of the client. The survey conducted for us on a province wide basis indicated that by far the greatest number of people consulted would prefer to see an individual lawyer in a private office. Both from the literature and from our hearings we must conclude however that there is a minority that feels more comfortable in a clinic setting and would, for many purposes, prefer that mode of delivery of legal services.

CHAPTER 6

DUTY COUNSEL

We have described in some detail the institution of Duty Counsel as it has developed under the existing Plan. It is apparent that by far the largest number of people who have been served by the Plan have been those assisted by Duty Counsel. It is this institution that has done most to distinguish the Ontario Plan from others in this country and elsewhere. It has permitted a very large number of members of the legal profession to participate in the delivery of legal services to persons of little or no means. It has provided such persons with ready access to legal institutions and it has done a great deal to ensure that the right of every person to his day in court can be exercised in fact as well as in theory.

On the civil side, it has done much useful work in assisting underprivileged and handicapped persons to ascertain and to defend their rights. It is through this feature of the Plan that many of the more ingenious and imaginative Area Directors have found means of helping persons whose legal positions are uncertain or who cannot easily obtain the services of private lawyers in relatively small matters requiring such service or advice.

In the Plan that we recommend the importance of this feature will in no way be diminished. In fact we feel it can be enhanced and its operation made even more useful to the Plan and to the public. In an earlier section it was suggested that the presence of Duty Counsel in the Criminal Courts was helpful to the administration of the courts and to the judges as well as to the accused. It is easy to conclude that if counsel is available the rights of an accused are being properly looked after, the court is being assisted and the quality of justice improved. On balance, we have little doubt that these things are true. But to state the converse of an acknowledged judicial precept, it is of importance to be certain that justice is being done in fact as well as in appearance. The presence of counsel will be misleading if the conditions are such that he is unable to render full assistance, if circumstances prohibit private interviews, if time does not permit proper consideration of the needs of each applicant or if counsel is inexperienced or lacking in competence.

These remarks have particular application to the role of Duty Counsel in the Criminal and the Family and Juvenile Courts. It is of special importance that in these Courts the physical facilities for the proper performance of the work of Duty Counsel should be provided. We are fully conscious of the many calls made upon the Department of the Attorney General and upon other departments of government for the provision of physical facilities for the administration of justice. Nevertheless the institution of Legal Aid has now become fully accepted as essential to the proper administration of justice and we think it not unreasonable to set as an objective the provision of adequate space in every building in which courts are conducted for private interviews between Duty Counsel and his clients. It is ludicrous to suppose that Duty Counsel, in the very short period of time available to him under the best of circumstances, can properly gather from an accused person in the well of the court immediately before the opening, the information he requires. He cannot fully advise the client whether or not a guilty plea would be in his best interests without full information, gathered in privacy. Similarly, both client and Duty Counsel in Family Court matters are severely handicapped if there is no opportunity for private conversation in some place adjacent to the courtroom.

A small private office for the use of Duty Counsel should be made available in every court house. In many of the smaller communities, however, no facilities whatever are available to counsel and client, whether legally aided or privately advised. Even a desk set aside in some prominent place in the court house would be an improvement on the present situation. What we would like to see in all the major court houses is a room available for private interviews and in addition a desk in some prominent place indicated by a sign, where Duty Counsel can be located and where liaison with other services can be established.

Much has been said to us about the various modes of delivery of legal services. It is apparent from our report that while we consider that the lawyer in private practice will continue to be the mainstay of Legal Aid in this province, there is room for several delivery modes and our recommendations are designed to make the new Legal Aid Plan as flexible as possible to meet the needs and preferences of local communities. The salaried lawyer will have his place and in many areas we have no doubt that it will be a prominent one.

Much of the reserve with which the question of the salaried lawyer in Ontario has been treated comes, we think, from the view that the public defender system is not appropriate in our province. We share this view although, because of local circumstances, there may be situations where the public defender is the only alternative to no defender at all. But the institution of Duty Counsel can serve as a bridge between the private Bar and a system of salaried lawyers and does have some of the characteristics of each of these major systems. In our discussion of alternative clinical models we pointed out that almost identical services are performed in existing clinics by salaried lawyers in one case and by members of the private Bar serving in rotation in another. A private lawyer taking his turn as Duty Counsel in such a clinic assumes to a degree the nature of a salaried full time staff lawyer. The possible disadvantage of a lack of continuity is balanced by the likelihood that constant repetition will not dull his sensitivity or blunt the sharpness of his perception. The same lawyer acting as Duty Counsel in the Criminal Courts resembles closely the private defender, concerned solely with the interest of his client. He has the duty, as does the public defender, to see that the opportunity for full justice is afforded to every person who comes to his court but the fact that Duty Counsel rotates frequently is the best possible assurance that he will not become prosecution minded or insensitive to the needs of his client.

In virtually all cases the speed with which matters are handled, the strangeness of the surroundings and the sometimes technical nature of the language involved represent the greatest difficulties a party has to face, not the complexity of the issues at stake. The simple reassurance obtainable from Duty Counsel, a person obviously at home in these surroundings, can be of significant benefit to a party, unfamiliar with the ways of courts and lawyers. It is our conviction that Duty Counsel should be available in every forum in which substantial rights of individuals may be placed in jeopardy. And, as we have stated in another place, "substantial" is to be taken in a subjective sense as referring to the importance of the matter to the individual concerned.

As a minimum, Duty Counsel must continue to be available in the Provincial Court (Criminal Division) whenever it sits. While investigation discloses that in all but a few cases Duty Counsel can now be made available in Family Court and in Juvenile Court, there should be no room left for doubt and Duty Counsel should always be available in such Courts. Furthermore, as we will suggest below, there

may be frequent occasions on which it would be proper, as well as convenient, for Duty Counsel actually to represent a party throughout the trial or other proceedings. As suggested in our discussions of students and of the clinical mode of delivery of services, there will be communities in which students and other para-legal personnel, properly instructed and supervised, will be able to assist greatly in these matters.

Small Claims Courts in this Province were designed as Courts for poor persons. While lawyers are not barred from appearing in such Courts, as is the case in some other jurisdictions, the relatively small amounts involved and the very low ceiling provided by the tariff combine to ensure that lawyers seldom do appear and Legal Aid certificates are not frequently issued. The character of a Small Claims Court varies from community to community but few persons who discussed the matter with us failed to remark that such courts are widely used by commercial concerns as collection agencies. Such concerns bring many cases before Small Claims Courts and are frequently represented by agents, highly skilled in the relatively few points of law that recur constantly in some types of commercial cases. Some of the evidence presented to us by student organizations indicates such a high rate of success for commercial plaintiffs as to show beyond doubt that their cases are well prepared and well presented.

As we have stated, agents frequently appear in Small Claims Courts and this forum therefore is one in which the service of law students and para-legal personnel, properly trained and supervised, is permissible and could be of inestimable value, especially to defendants. We also find great merit in the suggestion made to us by judges who have sat in such courts that the position of many defendants would be greatly improved if they could be given access to some knowledgeable person who could assist in preparing documents and advise on the evidence required to establish their claim or defence.

It may not be practical to have Duty Counsel in court at all times when the court is sitting and to have a duty officer available in the court office throughout business hours. We think, therefore, that Duty Counsel, prepared to give preliminary advice as well as to assist in the presentation of a case should be on call for Small Claims Courts, wherever they are situated. The particular arrangement and the source from which Duty Counsel should be available may safely be left to the Area Director in consultation with his Area Committee. The proximity of a Law school, the availability of articling students and the presence or absence of other types of para-legal persons will be only some of the matters that may enter their consideration.

Another forum in which we think Duty Counsel should always be on call is in County Court Chambers in landlord and tenant matters. These are areas in which students and para-legal personnel have shown considerable interest and have developed some expertise. In areas where clinics are established we would expect that much demand for assistance would be satisfied by them. Our main concern, however, is the fact that these proceedings can be of the greatest importance to many poor and unassisted persons. New and valuable rights have been given to tenants under the recently amended Landlord and Tenant Act, but even though some simplification may have been brought about, the law of landlord and tenant is complicated, landlords are by and large capable of affording legal advice and assistance and in many cases tenants are in need of help, the cost of which might strain their resources.

We see here an opportunity for co-operation between the Court Clerk and the Area Director. On days when the list indicates that both parties to all cases are already represented, no problems arise. At other times, however, in our view, Duty Counsel should be available to either party and the Area Director should take steps to ensure that he is informed when unrepresented parties are scheduled to appear. The particular technique for supplying Duty Counsel will vary with the size of the community and the practice of the local Bench and Bar.

Our later recommendation that all documents by which court proceedings are initiated should contain a notice regarding the availability of Legal Aid would seem to have particular value in such matters as the last two discussed.

We have earlier made reference to the various ways in which Area Directors have employed Civil Duty Counsel. Attendance at Toronto International Airport on immigration matters, regular scheduled attendance at Ontario hospitals, and attendance upon house-bound or bedridden persons are only some of the ways in which assistance has been given. We think that the employment of Civil Duty Counsel and the way in which available lawyers can best be deployed is pre-eminently a matter for the Area Committee. In many instances we have no doubt that a decision will be taken to channel such matters to a clinic. In many others, the private Bar will be prepared to serve in rotation as the needs of the community dictate.

The Board of Legal Aid Ontario should be responsible for the preparation of a general instructional handbook for the use of Duty Counsel. It will inevitably continue to be the case that a very large part of this work will be done by junior members of the Bar and often by more senior members whose normal practice would have little in common with the sort of matter required to be dealt with by Duty Counsel, Criminal or Civil. A handbook could be of assistance to both groups. In addition, the handbook could well include an outline of the procedures for judging eligibility and making whatever assessment may be necessary, a service which we have indicated should be carried out in most cases by the lawyer in his own office, or in the office of Duty Counsel, rather than by the Area Director and the assessment officer as hitherto. In some areas, as in the Family Court and Ontario Hospitals, special instruction may well be desirable and the Legal Aid Board, in co-operation with The Law Society, should prescribe programmes of training and make them prerequisites for service in these areas. For some purposes, courses of clinical training in approved law schools might well have qualified the new graduates without the necessity for further training. We do consider it essential, however, in order to ensure a high quality of service that all those accepting employment as Duty Counsel should be shown to be qualified to do so.

Up to this point, the Legal Aid Plan has enforced a rule that, with some exceptions made necessary by geographical considerations, a lawyer may not accept a certificate to act as solicitor or counsel for a person he has first advised in his capacity as Duty Counsel. The purpose of this rule is to ensure that there shall be no touting by lawyers looking for employment and we appreciate its importance. In certain cases, however, much delay and increased expense can result. Alternatively, especially in criminal matters, individuals may go unrepresented by reason of their reluctance to go through the elaborate routine of applying for a certificate with the inevitable result that further appearances will be necessary, each one involving the sacrifice of time and hence of income. Occasions will arise,

particularly in criminal and quasi-criminal cases, when a minimum of assistance by counsel will result in the presentation of a simple but valid defence. In many of such cases the reluctance of an accused to undergo the certificate process would result in his proceeding without advice and hence being unrepresented. We recommend, therefore, that when Duty Counsel and the involved party agree, Duty Counsel can see no legal complexity about the matter and the party is anxious to proceed at that time and hence would be otherwise unrepresented, Duty Counsel be permitted to proceed with the trial and deal with the matter as Duty Counsel without a certificate being issued. These considerations apply not only in the criminal courts, but in other quasi-criminal and civil courts as well.

For example, on many occasions in Family Court, assistance can be readily and easily given to a party if Duty Counsel is permitted to act as counsel with the knowledge and consent of the party and the necessity for a certificate is avoided. Applications to vary a Maintenance Order, for example, do not generally involve matters of any complexity but a defence may frequently be better put by counsel than it can be by an affected party. As with all his work, such instances would be reported by Duty Counsel to the Area Director and we can see no danger in permitting counsel to act in this way in the type of circumstances we have mentioned. We are persuaded that much delay and expense can be avoided and that little or no abuse will follow. The adoption of this principle as well as our proposal that Duty Counsel be prepared to take an application and to issue a certificate should result in the saving of valuable time and considerable sums of money, the elimination of many court appearances and the provision of useful assistance to many accused persons and parties involved in Family Court proceedings.

We should like further to make it clear that the new role of Duty Counsel as certificate issuer should not in any way curtail his normal role as Duty Counsel. As at present, when appropriate he should assist an accused person in obtaining bail, in adjourning matters to convenient dates and in all other preliminary matters now looked after by Duty Counsel, notwithstanding his added duty of issuing a certificate, to another lawyer, entitling his temporary client to retain counsel at the expense of the Plan.

Under the present Plan, certain areas have peculiar requirements in the criminal field, now filled by Duty Counsel. In Metropolitan Toronto, for example, at least in theory the telephone number of Duty Counsel is available to accused persons on a 24 hour basis upon their being taken to any Toronto jail or lock-up. The minimal advantage that has been taken of this provision cannot fail to raise doubts about the adequacy of the notice of this service that is supposedly posted in all Toronto Police Stations and lock-ups and we suggest that more should be done to ensure the co-operation of all officers in charge. This may be a service that could usefully be extended to other major centres as for example Hamilton, London, Ottawa and Windsor. We respectfully suggest that the Department of the Solicitor General, in co-operation with the Ontario Police Commission, circulate to the senior officers of police in all such cities a firmly worded instruction that notices advising all persons detained in police stations or lock-ups of the night telephone number through which Duty Counsel can be reached should be posted in some prominent place where they will be seen. Such officers should also be instructed that a request to telephone Duty Counsel and to obtain his advice must be honoured.

In Kingston, and in the adjacent area of Napanee, problems are presented by the presence of federal institutions of detention. In these areas Duty Counsel are provided to the prisons and penitentiaries on a regular basis not only to assist in connection with such matters as prisoner appeals but additionally to give advice and assistance in civil matters. In the District of Sudbury the same service is provided in connection with the provincial institutions there. We presume there are other areas in the province in which similar problems, unique to such areas, are to be found. We were impressed with the ability of the Area Directors in such areas to adapt the institution of Duty Counsel, Criminal and Civil, to the circumstances peculiar to their areas. We single them out for comment simply because they illustrate the great value of this institution with its capacity to meet the widely varying requirements of all the areas served by the Plan.

While more will be said on this topic in our report on service to rural and native people, we commend to the Area Committees of the future the suggestion received from many sources that in areas composed in large part of rural communities a Duty Counsel programme should be established to provide regular service by Duty Counsel by means of pre-advertised attendances at various places throughout the area. Again, flexibility must be the key but in areas where Area Committees have seen fit to recommend the establishment of clinics we can forsee such service being rendered through these clinics. Alternatively, the premises and facilities of other service organizations could be used on a co-operative basis by Duty Counsel, serving in rotation. In still other cases one or more salaried lawyers might be employed to deliver such services, assisted by members of the private Bar in rotation on a Duty Counsel basis.

Our final specific suggestion with respect to Duty Counsel relates to appeals within the Legal Aid system itself. In describing the structure of the proposed Plan we provide for an appeal to an Appeal Committee by an applicant to whom a certificate has been denied or by an Area Director when a certificate has been granted, unwisely in his view. On such appeals, Duty Counsel should be made available to the applicant for Legal Aid and such counsel should be permitted with the consent of the applicant, to argue the appeal.

CHAPTER 7

LEGAL AID IN CRIMINAL MATTERS

Quite apart from the work of Duty Counsel, the actual cases conducted under the auspices of Legal Aid on the criminal side are responsible for approximately 41 per cent of the total budget and for the greatest number of cases in any single category. The average cost of a criminal case is in the neighbourhood of $260.00.

On the whole, we have indicated that the Plan is operating in a satisfactory manner on the criminal side. In what follows in this section we disregard the activities of Duty Counsel and refer only to "cases" conducted by lawyers who have been issued certificates and paid by the Legal Aid Plan. To a degree, we echo the opinions and suggestions of the Ontario Law Reform Commission in its report on the Administration of Ontario Courts, Part III, Chapter 7, "The Impact of Legal Aid on the Courts". Our sources have been partly the same and our inquiries follow quite closely upon the heels of theirs.

Nowhere has the Legal Aid Plan made a more obvious impact upon the courts than in its criminal manifestation. It has been said that some 85 per cent of all defended criminal cases are assisted by Legal Aid. We are uncertain of the source of this figure but we see no reason to doubt it, so far as strictly "criminal" matters are concerned, always keeping in mind that more than 90 per cent of the work of the Provincial Courts (Criminal Division) is not strictly criminal but concerns provincial statutes and municipal bylaws. Even in this area, a very large proportion do receive Legal Aid and if our recommendations regarding summary offences are implemented, the proportion will become greater.

Precise figures are not obtainable but it is abundantly clear that the development of the Legal Aid Plan has brought into being a much larger and more expert criminal Bar than formerly existed. We have indicated elsewhere that more than half of all Legal Aid work in Ontario is done by lawyers with not more than six years experience and more than 75 per cent by those with less than twelve. Inevitably, therefore, much work is being done by persons with little experience, measured in terms of years. The other side of the coin, however, is that an opportunity is afforded by the Legal Aid Plan for recently graduated lawyers to obtain concentrated experience in the courts and to develop an expertise that might not have been within their grasp for many years had they been compelled to depend upon private clients. Indeed, it was generally acknowledged in the profession in former years that it was virtually impossible for any but a few lawyers to make an adequate living in a practice devoted exclusively or mainly to criminal law. The number of lawyers who are now able to do so has grown very considerably and there are many first class professionals in this field, especially among recent graduates.

Some lawyers are now exclusively engaged in criminal work and indeed there has even been criticism in some quarters that some lawyers are having to depend on what is essentially one client, i.e., the Legal Aid Plan, to too great an extent and that they are in danger of losing their traditional independence. Another factor that must be taken into account is the possibility that the very large numbers of lawyers now being graduated annually is likely to mean that there will be delay in obtaining profitable employment for a number of these. Legal Aid must not be permitted to

become exclusively or even largely served by young lawyers while waiting for more profitable employment through other channels.

The Ontario Law Reform Commission Report on the Administration of the Courts makes it apparent that the quality of justice and the efficiency of administration in the courts can be very much affected by the operation of Legal Aid and indeed the extensive inquiries and discussions of which we have had the benefit, make it perfectly clear to us that all who are concerned with the courts, judges, Crown Attorneys, court officials and private lawyers, are very conscious of their interdependence.

Our examination, therefore, has concerned itself with two things: the delivery of service of a high quality to those in need of Legal Aid in the criminal courts and the possible abuses and administrative practices that may have an adverse effect upon the administration of justice.

We are satisfied that the present system, generally speaking, is producing better service on the criminal side than any other system of which we are aware and, with proper attention to modification in detail from time to time, is likely to continue to do so. Much is said in legal rhetoric about the advantages of the independence of the Bar and the necessity of maintaining it. We are persuaded that this principle is of the utmost importance and that it is in fact protected and sustained by the present system. It must continue to be preserved, not only with respect to representation before the courts, but, equally important, with respect to all tribunals and government departments whose decisions can affect the rights of citizens.

Whatever may be the case in other jurisdictions, very little has been said to us about the possible advantages of the public defender system in Ontario. Subject to what we have said about the role of Duty Counsel and the activities of clinics in certain specialized areas, we have no doubt whatever that for this province the public defender would represent an inferior system and would grievously undermine the independence of the criminal Bar. The great disadvantage of that system, as we see it, would be the irresistible erosion of efficiency and enthusiasm on the part of counsel in the course of time. A second defect perhaps even more apparent to the public, arises from the fact that the prosecutor and defender in such systems both owe their livelihood to the same master, the State. And even in circumstances where it proves possible to set up a public defender office as a completely independent entity it is hard to believe that an inevitably overloaded lawyer, being opposed daily by the same prosecutor or prosecutors and appearing constantly before the same judge or judges, would not gradually become less zealous in the performance of his duties on behalf of the accused and more and more open to suggestion by the prosecutor. We do not believe there is an area of representation where it is more important to provide a proper solicitor and client relationship than in the field of criminal defence work.

The criticisms of the present system that we heard related principally to two areas. First, the uneven level of competence among Duty Counsel in some areas. As to this, we propose elsewhere a definite course of training for Duty Counsel. Second, the complexities and the exigencies of the criminal law and practice are such as to open the way to many abuses. Outstandingly, the complaints were that the prolonged process of obtaining a Legal Aid Certificate and finding counsel led to unnecessary adjournments and consequent serious delay, especially in the

Provincial Courts (Criminal Division). It was further said that accused persons were frequently knowledgeable about criminal procedure and were often able to postpone their own trials either by misrepresenting facts about their applications for Legal Aid or by deliberately taking as long as possible to proceed with the various stages of an application. It was then said that the system is abused from time to time by lawyers who elect trial in a higher court for reasons that have little or nothing to do with the interests of their clients but rather for the purpose of augmenting their own fees or obtaining experience for their own benefit.

We have been very much impressed with the extent to which the lengthy and sometimes complicated application and assessment process can interfere with the expeditious handling of court business. It was said to us on many occasions by judges of the Provincial Courts (Criminal Division) that they have no expectation whatever of being able to proceed with a case before the third or fourth time at which an accused person appears and that eight or nine appearances before trial are not at all uncommon. An accused person who is not in custody has it within his power to prolong proceedings by taking the longest permissible time to proceed with each stage of that process. The Area Director, the C.S.S. representative and the ultimate lawyer of choice may each have perfectly legitimate reasons for being unable to proceed promptly. The present almost absolute prohibition against disclosure of the fact that a client is legally aided makes it difficult for proper inquiries to be made by the judges or by court officials respecting the real reasons for delay.

As we explain in more detail elsewhere, we are recommending a new and simpler procedure for making application for Legal Aid and for assessment of eligibility. This step alone should make it possible to eliminate the greatest part of the delay in obtaining a certificate or at least in ascertaining whether or not a certificate may be issued. This procedure and the knowledge on the part of the court that the procedure exists should make it much more difficult for an accused person, by evasive and misleading or untruthful replies, to postpone or prolong the court proceedings unduly.

The question of abuse by members of the Bar is one that has surfaced periodically throughout the history of the Legal Aid Plan. It is referred to in the report of the Law Reform Commission already cited and inquiries and investigations have been made by courts and by the officials of the Plan as well as by the Legal Aid Committee of the Law Society. Each such inquiry has reached the conclusion that while some abuse is inevitable, its incidence is not high and specific cases are very difficult to pin-point.

We find it is significant that although we have talked to a large number of judges at every level of the judicial hierarchy and especially to judges of the Provincial Court and of the County and District Courts, we found virtually no judge prepared to recommend that the Legal Aid Plan should be given any power to curtail, directly or indirectly, the rights given to accused persons under the substantive law of the country. The right to elect trial by a higher court rather than to be tried by the Provincial Judge, for example, is one which is given to an accused in a very large number of cases under the Criminal Code. The complaint is made and not only by judges, that this right is much abused in that counsel will elect to have their clients tried in the higher court, will proceed with the preliminary inquiry and will then either re-elect and plead guilty before the Provincial Judge or plead guilty before the County Judge.

Counsel acting for accused persons have told us that in many jurisdictions Crown counsel is not free with his disclosure and that a thorough preliminary inquiry is the only practical way in which they can ascertain the case they have to meet and hence decide whether or not to proceed with a defence and to prepare adequately for that defence. They point out also that it is a proper function of an advocate to do whatever can legitimately be done to see that his client gets the most favourable result reasonably possible. So long as judges are human beings, differences will exist among them, particularly with regard to sentencing and there is nothing improper in using lawful means to ensure that an accused person comes before the judicial officer most likely, in the opinion of counsel, to take a lenient view of the particular offence charged.

We have no doubt that some Crown counsel are far less frank with defence counsel than they might properly be and that failure to disclose evidence at an early stage does lead to delay and to insistence on preliminary inquiries in some cases where full disclosure would obviate the need. Urging frankness upon Crown counsel, however, is not a sufficient answer. The statutory law gives to an accused person the right to elect trial in a higher court and the right to a preliminary inquiry in such circumstances. We agree with the view that Legal Aid cannot take it upon itself to curtail such rights once it has been determined that an accused is eligible for Legal Aid.

Additionally, the principles of freedom of choice of counsel and of the independence of the Bar are utterly inconsistent with the view that a restriction should be placed upon counsel regarding these matters simply because a client is legally aided. Counsel is employed because of his technical skill and because of the judgment he is able to bring to bear on his client's case. The selection of the mode of trial and the decision whether or not to proceed with a preliminary inquiry are two matters upon which counsel must exercise his judgment and equal justice for all cannot be provided by curtailing his right to do so.

That having been said, undoubtedly cases will arise where counsel is improperly motivated in making the decisions he is called upon to make in the areas to which we have referred. Traditionally, the Discipline Committee of The Law Society is the place where such matters are dealt with. We do not see it as part of our function to make suggestions in this area. We do feel, however, that cases will arise in which it will be natural to question the motives of counsel, and judges will from time to time no doubt refer such cases to The Law Society. Again, the prohibition against disclosure of the fact that a case is legally aided generally prevents a judge from taking judicial notice of this fact and in most cases, while he may have strong suspicions, he is not actually aware whether a case is or is not legally aided. The removal of the bar would tend to reduce abuses in this area. Almost no judge we spoke to was happy with the idea that the judges might be called upon or might take it upon themselves to police counsel with respect to the Legal Aid Plan. Nevertheless, we are persuaded that knowledge by counsel of the fact that the judge was aware that his client was legally aided would be a powerful deterrent to any lawyer tempted to abuse the Plan in any of the ways mentioned.

Two other areas were touched upon in submissions made or conversations held, namely separate representation in the case of jointly charged accused and Legal Aid for recidivists. It was pointed out that when two or more accused were being tried together and each was represented by separate counsel, proceedings

could be unduly dragged out, adding greatly to the cost of trials and further congesting the work of the courts. As to recidivists, the natural question arises as to why a person who has had his chance and has been convicted and chooses to offend again should have the benefit of Legal Aid at the taxpayer's expense.

We are of the view that these questions must be answered as were the previous ones: the law gives certain rights to accused persons and it can be no part of a Legal Aid Plan to sit in judgment upon a man whose rights are to be determined by the courts. In fact, while such cases may be sensational and may be provoking to all who participate, the number of cases in which separate defences prolong trials is not large. By his power to control the conduct of the trial, an experienced judge can reduce the time required for such cases. As to recidivists, it is a fact of life that persons convicted of crime are occasionally the recipients on later occasions of over-zealous police attention. In our law the presumption of innocence continues to be mandatory for the protection of an accused person, with or without a record of prior convictions. So long as this continues to be the law, it cannot be frustrated, in our view, at the discretion of the Legal Aid administration. The recidivist may be the very person who needs counsel most. The expense of the Plan is part of the price that must be paid if we wish to maintain our system of criminal justice.

In addition to the simplified procedure for application and assessment which we contemplate, much delay would be avoided and better use made of the Plan by the addition to every document by which an accused person was required to appear in court of a simple notice respecting the accused's rights under the law and under Legal Aid. We so recommend in another section. Persons who first appear in court from a place of detention should have had the opportunity to read a notice in the jail or lock-up respecting Legal Aid. In any event, they will inevitably encounter Duty Counsel upon their appearance in court. Furthermore, every conscientious Area Director works out arrangements with the local police to ensure the presence of accused persons who are in custody in time to give Duty Counsel an opportunity of interviewing such persons before the opening of court. However, those who appear in answer to summonses or appearance notices, we are told, frequently do not arrive until the actual time given for the opening of court, and, in any busy court, there is inadequate time or opportunity for Duty Counsel to interview them and advise them of their rights and of the service available before the opening of court. This can result in a denial of their proper rights or in delay and confusion in the courtroom. These undesirable results can be largely obviated by providing that all forms of first instance which notify an accused person that he is required to appear contain a notice that the accused person has a right to counsel, that Legal Aid may be available, that Duty Counsel may be seen at a fixed time in advance of the opening of the court, and that the local Legal Aid office is situate at a certain address.

Our general proposal for a simpler version of the application and assessment procedure again applies. It should be possible in all buildings used for the holding of criminal courts and on all court days for an accused person to make an application and in the great majority of cases to receive his certificate, or at least a notice that a certificate would be issued, at or before the time of his first appearance in court. At least in the major cities and as time goes on in the majority of county towns, there should be adequate accommodation for Legal Aid personnel in or in the immediate vicinity of court buildings for the purposes discussed in our section on Duty Counsel and as a centre for liaison with auxiliary services.

Our suggestion in the section headed ''Other Recommendations'' as to the constant review and updating of lists of panels of lawyers has, of course, application in the criminal field as in the civil. A complaint made, however, was that a small proportion of lawyers in the criminal field permit themselves to undertake so many cases that they are frequently unable to be present on dates fixed by the courts for trials and that they in themselves constitute a major reason for delays experienced. To control this problem was, we understand, the principal purpose of The Law Society's ruling that no more than 75 cases could be taken by an individual lawyer in the course of a year without special permission. It was suggested to us on several occasions that there should in addition be a rule limiting a lawyer to a much smaller number of cases within any given period of time as, for example, 20 within a three month period. We are not of the view that there should be such an absolute prohibition. We do recommend, however, that the Board of Directors on complaint made may at any time prohibit the grant of further certificates to any lawyer who has an excessive number of certificates then outstanding in the criminal field.

CHAPTER 8
STUDENT LEGAL AID SOCIETIES AND ARTICLED STUDENTS

The Act and Regulations now provide that both law students and articled students may participate in the operation of the Plan. Pursuant to Regulations 74 to 78, each of the six law schools in the province has established a student legal aid society, which, under the direction of the Dean, may receive clients by referral from the local Area Directors in cases where the client is ineligible for a certificate for other than financial reasons. These cases involve those substantive areas where the Area Director exercises his discretion against the applicant under Section 13 of the Act. Furthermore, law students may act as assistants to Duty Counsel.

Articled students may perform services under the Act for clients with certificates if their conduct is supervised by their principals. In addition, articled students may perform the same services that a law student performs if so requested by the Area Director. The tariff provides that a principal may bill the Plan at $12.00 per hour (less the 25 per cent reduction) for the services of his articled student. There is nothing in the Act or Regulations providing for compensation for law students or their schools for services rendered.

LAW STUDENTS

Dealing first with the law students, we estimate that at the present time at least 800 students are engaged in Legal Aid through student legal aid societies and in 1973 approximately 12,500 people in this province were provided with summary advice or information or with major assistance by these agencies. This substantial involvement affords some indication of the extent of the need that exists in the province and that is not now being served by graduate lawyers under the Plan. The student legal aid societies serve not only other students on their campus but in each case the local community as well. For the most part this is accomplished by staffing clinics in the communities on a regular basis. These clinics are often connected with pre-existing community agencies which provide the physical amenities that are required. However, each of the law schools in the province is currently making a substantial financial contribution to the public at large by absorbing the costs of faculty and special supervisors and the costs of office space, equipment and staff. Last year the estimated cost of operating the six societies was $120,000.00. Funds were obtained from federal sources, university sources, the law schools themselves and from the Plan. In 1973 the Plan divided $55,000.00 amongst the six schools on the basis of gross student enrollment.

It is obvious to us that law students have made a very valuable contribution to Legal Aid in this province and they have done so to a large extent by contributing not only their time but also the financial resources of their schools and other agencies that they have canvassed. Because in each case the financial requirements of the societies are far greater than the subsidies of the Plan, both students and faculty spend substantial time and effort in seeking funds and each year they rarely know if they can exist from month to month. This is especially so in anticipating the possibility of providing service for clients during the summer months when classes are over and the clients' problems remain.

If our recommendations in other areas are implemented, the current role of law students will change somewhat. If more substantive areas become matters of Legal Aid as of right rather than by discretion, the students will become less involved in those areas now served by them. The student societies that made submissions to us view this as an overall improvement. We agree. While the public will lose the competent and zealous assistance of our law students, they should have better service from experienced lawyers. Furthermore, law students are only available in five Ontario centres and citizens living in other areas are now denied both students and lawyers under the Plan. In the future all of the province should be better and more evenly served.

Although in future, students may thus find less exposure in some areas, there is still a tremendous need for their valuable assistance. As assistants to Duty Counsel in the courts and at clinics, as assistants to full time solicitors in clinics, as assistants to lawyers working on certificate matters and in the substantive areas where certificates are still unavailable for other than financial reasons, students have a continuing role to play. In addition, there are some courts where students may have a special role. In our opinion, Small Claims Courts should be staffed by Duty Counsel and subject to the availability of law students and their faculty's willingness to co-ordinate this service with an academically valuable clinical course, law students are particularly suited to assist in this court. Of course, the students must be properly supervised by lawyers who may or may not be law professors and an appropriate funding arrangement should be provided.

Similarly, students can be integrated into the Criminal and Family Courts as assistants to Duty Counsel in a programme that is designed and supervised by their faculty so as to ensure that their experience is of academic value as is now done at Queen's University. The same is true with respect to work in a clinic as part of a law school's clinical programme as the experience at Parkdale shows. Indeed in our discussion of the delivery of legal services we point out that in appropriate cases it may even be possible to constitute a student legal aid society or a branch clinic thereof as a neighbourhood legal aid clinic.

As to funding, we believe that to the extent that the law schools are performing a Legal Aid function, they should not be expected to subsidize the Plan. On the other hand, because student involvement in Legal Aid under proper supervision can be academically valuable and in many cases the work being done is outside of the normal coverage of the Plan, the schools should be expected to contribute some portion of their faculty's time. It is unreasonable to expect them to continue at the level of their present contribution and an appropriate agreement regarding the payment by the Plan of a proportion of the out-of-pocket expenses of each school should be negotiated in every case. This is peculiarly an area in which the co-operation of the Federal Government should be sought and the schools should be encouraged to seek funds from that and other available sources.

ARTICLED STUDENTS

We are satisfied that the present role of articled students is sensible and proper. To the extent that articled students participate, their principals should continue to be paid at the current tariff rate. If the Plan expands as contemplated, articled students should be able to serve in the same areas that law students can serve, especially on panels of Duty Counsel in Small Claims Courts. Where it is

appropriate to provide Duty Counsel in County Court in landlord and tenant matters, articled students (or even law students, if available) could staff these panels.

The new Plan as we see it provides numerous opportunities to incorporate the assistance of both law and articled students. The Plan should be flexible in this respect and should be able to accommodate the assistance of students where appropriate in accordance with these principles.

CHAPTER 9

FINANCIAL ELIGIBILITY AND ASSESSMENT

In our general description of the Plan we have referred to the need for interviews and reports by personnel of the Ministry of Community and Social Services as one of the reasons for the time lag that frequently occurs between the application for Legal Aid and the grant or refusal of a certificate. In our view this lapse of time, which averages two to three weeks is unacceptable and we think it could in large measure be avoided.

Another substantial criticism, frequently voiced, was that it is impossible for the applicant or any member of the general public to know in advance the criteria by which his eligibility for Legal Aid is measured. The Act now provides in Section 16(2) that in every case except where the Aid being sought is estimated by the Area Director to cost not more than $60.00 and he is satisfied that the applicant can pay no part thereof the application "shall be referred by the Area Director to an assessment officer for a report as to whether the applicant can pay no part, some parts, or the whole of the cost of the Legal Aid applied for". The assessment officer is required by Section 16(3) to consider the "income, disposable capital, indebtedness, requirements of persons dependent on the applicant and such other circumstances as he considers to be relevant" and to report to the Area Director as to whether the applicant pay none, some or all of the cost of the Legal Aid applied for and how much, if any, the applicant can contribute towards that cost. The Area Director may not issue a certificate until he has received such report, even though he is not strictly bound by it. In the discharge of the obligation thus placed upon "an assessment officer", the Ministry of Community and Social Services has devised a rather elaborate system of inquiries and formulae, not available to the public, for making this inquiry. The Ministry has an entirely separate branch numbering 77 people for the sole purpose of performing these assessments. During the year ended March 31st, 1974, C.S.S. reported processing approximately 80,000 referrals for assessment from area offices. The number of applicants reported by C.S.S. as able to pay for all of their Legal Aid costs plus the number of applications withdrawn were approximately 37 per cent of total referrals. The Plan reports that 28 per cent of total referrals were refused Aid or withdrawn within that same year. The direct cost of the Legal Aid assessment branch has been estimated by our consultants, after referring to both the Plan officials and the appropriate officers of C.S.S., at $9.79 per referral or a total of $784,225.00 for the year. The figure quoted by the Department itself was $782,000.00, a difference so small as to be insignificant.

According to the brief submitted by the C.S.S. Department, it appears that approximately 80 per cent of all applications for Legal Aid are referred for assessment. Up to two-thirds, the figure fluctuating between 60 per cent and 66 per cent, have consistently been assessed "no cost". An additional proportion has always been assessed as able to pay part of the cost. However, taking 1973 as an example, when 1.8 per cent were recommended as able to pay part costs, it is obvious that almost all were assessed simply as able to pay none or as able to pay all of the costs. In other words, while it might be thought that the elaborate system developed by the Ministry of Community and Social Services would be capable of fine gradations thereby ensuring maximum equity with regard to assessment, such has not been the case.

It has been said that the ability of the Ministry to apply a ''needs'' test rather than a ''means'' test has been one of the great advantages of the system. It is claimed, with justice, that the establishment of arbitrary limits for eligibility inevitably means that great injustice is done to those just above the celing while those below it by a dollar or two are disproportionately rewarded and that the inequities in such a system are obvious.

Another advantage claimed for the present liaison with C.S.S. is the ability in some cases of C.S.S. representatives to make available counselling and other social services when these are seen to be more appropriate than strictly legal services.

With this last claim we can have no quarrel. The present system, however, has taken minimal advantage of this possibility and we feel that our recommendations, made elsewhere in the report, for educational and informational services as well as for the preparation of a handbook dealing with the total services of the community goes a long way towards seeing that applicants are referred to the facility best suited to their problems.

The Ministry of Community and Social Services has itself for some time been recommending that the assessment, as a routine, be eliminated in the case of applicants in receipt of family benefits and general welfare. Such people have already been assessed in order to receive assistance in the first place and a further assessment is not only demeaning but useless. In fact, of the minimum of 60 per cent of all applicants referred who were recommended for Legal Aid without charge. 63 per cent had as their principle source of income some form of social assistance or payments received by way of a retirement fund, alimony or parents. While the latter small group may present some problem, there can rarely be a problem in ascertaining with accuracy the income of the balance and, as the Ministry's own brief points out they are ''scarcely an affluent group''.

While the cost of the legal assessment branch of the Ministry has not been shown as part of the Legal Aid Budget, it has in fact been part of the cost of Legal Aid. It has done useful work but the mere fact that a second organization is involved has resulted in much delay, frustration and expense for those who most need Legal Aid services. Partly because the result will be some saving to Legal Aid, in the face of substantial increases that we are elsewhere recommending, but principally because of the extent to which it will eliminate ''red tape'' we are recommending that the services of the assessment branch of this Ministry be discontinued.

One of the recommendations made by the Ministry, with which we concur, is that the limit of $60.00 below which an application for Legal Aid can be referred without an assessment be raised to a more realistic level in the light of the inflation that has occurred since that figure was inserted in the Act and that the advice and assistance programme be enlarged, though perhaps only after the results of a proposed pilot project in this area have been analysed.

We have enlarged the category of cases in which certificates should be issued as a right to a person financially entitled. At the same time we propose that the whole process of application and assessment be at least partially decentralized by not only permitting, but encouraging all lawyers who agree to participate in the

Plan to accept applications and, in the largest possible number of cases, to grant or refuse certificates. Only in the areas where discretion continues to exist should it be necessary to refer applications to the Area Director or to the Area Committee. We recommend that Legal Aid Ontario make provision for the receipt of applications by all persons who may be in a position to meet the convenience of applicants. This would include all lawyers who agree to participate in the Plan as well as approved para-legal personnel, particularly in native and remote communities. We recommend further that, to the extent necessary, enabling legislation be enacted so that such persons will be able to administer an oath or statutory declaration so that an application may be completed by an applicant on his or her first visit and, in appropriate cases, a certificate issued then and there. Better still, we feel that penalties might be provided for making false statements in an application and then the oath or staturory declaration could be eliminated.

In addition, we recommend that a simplified assessment procedure be developed and appropriate tables prepared so as to permit assessments to be made in the majority of cases by the person first interviewing an applicant or, at latest and in cases involving discretion, by the Area Director. As a starting point, we feel that a threshold should be established corresponding to the definition of poverty as used in the report of the Parliamentary Commission on Poverty, the Croll Commission, updated to take into account subsequent inflation. With allowances for dependents, required contributions should start at that threshold and should advance progressively to a selected ceiling. So long as contributions were steeply graded, there is in theory no reason why a ceiling should be established and in fact we think availability should be extended to at least a total net family income of $16,000.00. Such an open-ended formula, or at least one with a high ceiling, eliminates in the great majority of cases the inequity that results when a low ceiling is established and a level rate of contribution demanded up to such ceiling and service refused beyond it.

In addition a simple system should be devised to calculate deemed annual family income based on net asset values in cases when an applicant is possessed of any property. We feel that under present circumstances 10 per cent of net asset values might be a fair figure to apply to produce deemed income.

What we would then propose is a formula based on such tables to arrive at equitable contributions by applicants of varying incomes. The average cost of each particular type of litigation and of advice and assistance is calculated annually by the Plan and we propose that an applicant should be required to contribute up to the amount indicated by the tables or the average cost of the type of aid requested, whichever should be less.

We are appending to this section two sets of tables indicating first, the calculation of deemed annual income based on net asset values and second, the contributions to be required from applicants at various income levels.

In addition, we append a proposed new type of assessment form which, in our view, with a minimum of explanation, could be easily applied to all applicants by the first interviewer.

We hasten to add that there is no magic in the threshold level, the conversion figures to be applied to assets or the particular scale of contributions suggested in

our examples. These would be for the Directors of Legal Aid Ontario to determine. Once fixed they should be subject to periodic review and should be indexed to some easily ascertainable standard such as the Consumer Price Index. We have in mind simply the creation of a procedure that would involve, in a very large number of cases, only one stop by the applicant, would provide quicker access to Legal Aid, would simplify administrative procedures thereby reducing both time and cost and that would, by largely removing discretion from those concerned with applications and assessment, achieve uniformity and equity in the application of the Plan.

An additional desirable result of an open-ended or high-ceilinged scale would be to allow persons of middle income, whose contributions by way of taxes largely support the Plan, to obtain some benefit from it. One of the specific instructions given to the Task Force was to assess the availability of subsidized legal assistance to middle income groups. We have felt ourselves unable to respond very constructively to this direction. Whatever may be the case in the future, at this stage we do not consider that any universal, pre-paid plan of coverage, private or public, would be appropriate. Little is known to date about the frequency with which members of the population as a whole encounter legal problems with which they require assistance. When an assortment of twelve common problem situations was suggested to those who participated in the survey conducted on our behalf, approximately two-thirds said that they had encountered none of these problems. In any case, it seems a reasonable assumption that the requirement of universal legal care is much less acute than that of health care.

Some experiments have been conducted with pre-paid plans of an insurance nature but these have been so few and experience to date has been so slight that we are reluctant to attempt to evaluate them. Short of some such system, we feel that the best way in which subsidized legal assistance can be held out to middle income groups is through some such plan of progressive charges as we here propose.

In considering the conversion of capital assets to deemed income we would make one exception, and only one, to the formula. In the case of all other assets it seems to us fair to charge the applicant with the income he might receive from the value of such assets reasonably invested. The family home is not, however, an income producing asset. We do not consider it equitable to charge the person with a $10,000.00 equity in a family home in the same way as a person with $10,000.00 in the bank. We therefore recommend that the homeowner or the owner of an equity in his home be given the option of submitting to the conversion formula or agreeing that the Plan shall have a lien upon his property, realisable only upon death or upon sale of the property, with the proviso that another property later acquired for the same purpose may be substituted.

We think that two conditions are required for the success of such a recommendation. First, the Act should provide substantial penalties for deliberate mis-statements made by an applicant regarding his means. The fact that such penalties are provided should be clearly and prominently stated on application forms and should be read to the applicant by the person receiving the application.

Second, an applicant must consent to permit the Plan to verify statements made by the applicant by referring to such sources as banks, finance companies, and welfare agencies when the Plan deems it appropriate to do so. Tests would

have to be made by the Plan in a proportion of cases, such proportion being determined on a trial and error basis.

Provision should be made by the Directors for the routine collection of a portion of the required contribution before work authorized by a certificate is commenced and for regular periodic contributions thereafter. In this connection it is worth stressing that the method of assessment adopted by the present Plan has been at least partly responsible for the relatively large total of accounts in arrears and bad debts accumulated by the Plan. As our consultants have pointed out, many of the people eligible for Legal Aid are bad credit risks simply because they have no money. It is apparent that unrealistic contribution targets have been set with respect to many clients. It is particularly obvious for example that almost no one who is sent to jail for a considerable period is in any position to pay his debts to the Plan, whatever undertakings may have been made.

Coupled with this accumulation of bad debts has been the imposition of an unduly rigid system which has made it next to impossible for the Controller of the Plan to follow normal and realistic commercial practice and write off bad debts.

The Controller has made a detailed, realistic proposal for writing off the bulk of the present accumulation. His proposal is known to the Department of the Attorney General and has been commended by our consultants. We think, whether or not our proposal for a new entity is accepted, the proposed system of write-offs should be implemented without delay.

For the future, a modern system of collection should be established. Advice should be taken from outside consultants with regard to the system but we think greater reliance should be placed upon the staff of Legal Aid Ontario and less upon outside agencies once a suitable system has been installed.

EXAMPLE OF TABLE 1

TABLE TO BE USED TO CALCULATE DEEMED ANNUAL INCOME BASED ON NET ASSET VALUES

Net Asset Range	Deemed Annual Income	Net Asset Range	Deemed Annual Income	Net Asset Range	Deemed Annual Income
Below $ 500	$ 0	From $5,001 to $ 5,500	$526	From $10,000 to $10,500	$1026
From $ 501 to $1,000	76	From $5,501 to $ 6,000	576	From $10,501 to $11,000	1076
From $1,001 to $1,500	126	From $6,001 to $ 6,500	326	From $11,001 to $11,500	1126
From $1,501 to $2,000	176	From $6,501 to $ 7,000	676	From $11,501 to $12,000	1176
From $2,001 to $2,500	226	From $7,001 to $ 7,500	726	From $12,001 to $12,500	1226
From $2,501 to $3,000	276	From $7,501 to $ 8,000	776	From $12,501 to $13,000	1276
From $3,001 to $3,500	326	From $8,001 to $ 8,500	826	From $13,001 to $13,500	1326
From $3,501 to $4,000	376	From $8,501 to $ 9,000	876	From $13,501 to $14,000	1376
From $4,001 to $4,500	426	From $9,001 to $ 9,500	926	From $14,001 to $14,500	1426
From $4,501 to $5,000	476	From $9,501 to $10,000	976	From $14,501 to $15,000	1476
				From $15,001 to $15,500	1526
				From $15,501 to $16,000	1576

*Calculated at 10% from the midpoint in each range.

EXAMPLE—TABLE 2

CALCULATION OF CONTRIBUTIONS

Total income	Percentage of available income to be paid by client*	Contributions payable by client
5000	0.00	0.00
5500	1.00	2.50
6000	2.00	10.00
6500	3.00	22.50
7000	4.00	40.00
7500	5.00	62.50
8000	6.00	90.00
8500	7.00	122.50
9000	8.00	160.00
9500	9.00	202.50
10000	10.00	250.00
10500	11.00	302.50
11000	12.00	360.00
11500	13.00	422.50
12000	14.00	490.00
12500	15.00	562.50
13000	16.00	640.00
13500	17.00	722.50
14000	18.00	810.00
14500	19.00	902.50
15000	20.00	1000.00
16000	21.00	1155.00

*Calculated on the mid point between each amount.

ATTACHMENT I - Page 1 of 2

APPLICATION FOR LEGAL AID

APPLICANT INFORMATION

GENERAL INFORMATION ON APPLICANT:

DAY | MON. | YR. — BIRTH DATE | M OR F — SEX | TELEPHONE

NAME: SURNAME | GIVEN NAMES

ADDRESS: NUMBER AND STREET | CITY, TOWN ETC. | POSTAL CODE | COUNTY/DISTRICT

FAMILY INFORMATION:

MARITAL STATUS ☐ S = SINGLE D = DIVORCED W = WIDOWED M = MARRIED P = SEPARATED

SPOUSE'S NAME: SURNAME (ONLY IF DIFFERENT FROM APPLICANT'S) | GIVEN NAMES

SPOUSE'S ADDRESS: (ONLY IF DIFFERENT FROM APPLICANT'S)

NUMBER OF DEPENDENTS: ☐ SPOUSE ☐ CHILDREN ☐ OTHERS - SPECIFY _____ TOTAL NUMBER

SPECIFY _____

INCOME

EMPLOYMENT INCOME OF APPLICANT AND SPOUSE: EMPLOYER NAME/ADDRESS	F = FULL TIME P = PART TIME	A = APPLICANT S = SPOUSE	TYPE OF WORK	ANNUAL INCOME IN DOLLARS
	☐	☐		$
	☐	☐		
	☐	☐		
	☐	☐		
	☐	☐		
			TOTAL EMPLOYMENT INCOME	$ A

TYPES OF ASSISTED INCOME:	ANNUAL INCOME IN DOLLARS
UNEMPLOYMENT INSURANCE	$
FAMILY BENEFITS	
GENERAL WELFARE	
OTHER (SPECIFY)	
TOTAL ASSISTED INCOME	$ B

NET ASSETS

ASSETS: BRIEF DESCRIPTION	ACTUAL OR ESTIMATED VALUE
CASH:	$
SECURITIES:	
AMOUNTS RECEIVABLE:	
INSURANCE SURRENDER VALUES OR TRUSTS:	
BUSINESS:	
REAL PROPERTY:	
OTHER (SPECIFY):	
TOTAL ASSETS:	$ C

LIABILITIES:	ACTUAL OR ESTIMATED VALUE
LOANS (BANK, FINANCE COMPANY ETC.)	$
MORTGAGES ON PROPERTY:	
OTHER (SPECIFY): _____	
TOTAL LIABILITIES:	$ D

NET ASSETS (TOTAL ASSETS LESS TOTAL LIABILITIES) (C - D) $ E

ASSESSED VALUE

TOTAL ASSESSED ANNUAL EMPLOYMENT AND OTHER INCOME VALUE:	
TOTAL EMPLOYMENT INCOME (BOX A)	$ F
TOTAL ASSISTED AND OTHER INCOME (BOX B)	G
DEEMED INCOME VALUE OF NET ASSETS (TABLE 1 APPLIED TO BOX E)	H
TOTAL ASSESSED ANNUAL EMPLOYMENT AND OTHER INCOME VALUE	$ I

ATTACHMENT I Page 2 of 2

SUMMARY

APPLICANT'S CONTRIBUTION:*

COST OF CASE
$ J

NUMBER OF DEPENDENTS (FROM PAGE 1)

TOTAL INCOME (BOX I)
$

CONTRIBUTION
$ K

* NOT TO EXCEED AMOUNT SHOWN IN BOX J

APPLICANT'S CERTIFICATION AND CONSENT

I, an applicant for legal aid under The Legal Aid Act 19 , and I, (if applicable) spouse of the above applicant consent to permit any party so authorized under this Act to have access to any information about my financial affairs as may be necessary to verify my financial position at the time of this application.

I, , and I (if applicable) certify that the information contained in this application is substantially correct to the best of my (our) knowledge and belief in full understanding of the legal penalties for supplying false or otherwise wilfully misleading information.

We also certify that legal aid has not previously been applied for in respect to this occurrence.

Agreement to Pay

I/We hereby agree to pay the amount of $ to the Law Society of Upper Canada at the office of the Provincial Director toward the maximum cost of the aid of $.

I/We agree to make payment in full of $ by 19 or in monthly instalments of $ over a period of months (not to exceed 12) commencing 19 . I/We am/are aware that if the cost of the aid is less than the amount which I/We have paid for the aid or if costs of the action are assessed against another party, I/We am/are entitled to a refund for the excess collected by the Law Society of Upper Canada.

INTERVIEWER'S COMMENTS:

TYPE OF CASE:

PROBABLE RELIABILITY OF FINANCIAL INFORMATION IN SUBSTANCE: ☐ GOOD ☐ FAIR ☐ POOR

CHAPTER 10

PAYMENT OF LAWYERS UNDER LEGAL AID

As already noted, after 1951 and prior to the introduction of the current legislation creating Legal Aid in Ontario a voluntary Plan was in existence. Under the voluntary Plan, lawyers doing Legal Aid work were reimbursed for proper disbursements including the fees of expert witnesses when authorized. There were no fees paid to lawyers except that on occasion, when a client was charged with a capital offence, the Attorney General continued the pre-1951 practice of paying a nominal per diem fee to counsel.

In 1965 the Common Committee recommended that the ''new'' Act should provide for payment of a reasonable sum for services rendered in Legal Aid proceedings. This was based on the premise that Legal Aid should not be a charitable operation but should be available as a matter of right. It was felt that the only way that the Plan could work was to ensure that indigent clients had the right to call upon counsel of their choice who would provide services for a fee that was reasonably commensurate with the fee that would be earned on a private basis. Accordingly it was recommended that a lawyer doing civil Legal Aid work would submit his bill to the Taxing Officer on the same basis that he would charge a private client but that he would receive 75 per cent of his fee as taxed. The 25 per cent reduction would constitute his contribution to the Plan on the basis of his professional responsibility to the public. For criminal work a tariff was to be developed and again the lawyer would receive 75 per cent of the tariff fee. It was thought by receiving 75 per cent of this fee the lawyer would be contributing one half of his profit. The notion that the 25 per cent contribution may have been in conflict with the principle that Legal Aid was a matter of right rather than charity was sacrificed for the sake of expedience and common sense. The province was about to undertake a Plan with an open-ended budget and while the Common Committee tried to make meaningful estimates as to cost, it concluded that it was impossible to do so. The contribution by the Bar was an important budgetary consideration.

These tariff recommendations were not accepted by the government. After lengthy debate it was decided that all fees should relate to a special Legal Aid tariff which would presumably reflect fair remuneration for work necessarily and reasonably done. This provided the government with a greater degree of cost control. The 25 per cent contribution by the Bar was accepted.

Should the Bar in 1974 and henceforth continue to contribute to the Plan by accepting reduced fees? Should lawyers doing Legal Aid work receive fees based on a special Legal Aid tariff rather than be paid as on a private basis?

During the course of our hearings we received submissions by some consumers who felt that ''Legal Aid lawyers'' provided second class service and that for the most part it was the younger, less experienced members of the Bar who provided it. It was suggested that a prime reason for both complaints related to the fact that the lawyer was getting a lesser fee than he ordinarily would receive. Clients felt that they must accept this second class service because it was free to them and some financial burden to their solicitor. There is no way of assessing the complaint regarding second class service. We received many submissions that

people were generally satisfied with lawyers doing Legal Aid work as well and the survey tends to indicate that this is true.

As to the second point, however, statistics indicate that in the year ended March 31st, 1974 approximately 53 per cent of Legal Aid work was being done by lawyers who were in practice for six years or less. From that point on, participation begins to decline sharply with seniority. Everyone recognized that we would have a better Plan if more experienced lawyers participated to a greater extent but this was difficult to expect because the gap between the Legal Aid tariff and the fee that they could otherwise earn varied directly with experience and seniority. Would these problems be alleviated by eliminating the 25 per cent contribution or by eliminating the tariff?

In our view, there is sense in concluding that better, more experienced service would be provided if the financial return was greater. However, we cannot recommend a move from the tariff to an open-ended method of payment. We are satisfied that the current tariff (before the 25 per cent reduction) is a fair reflection of fees customarily paid by a client of modest means and this tariff is and can continue to be under constant review. A tariff provides the government with some control over the cost of the Plan and better enables it to make the political decisions as to how much the public should pay for what is at least in part a social welfare programme. Furthermore a tariff provides a mechanism of control for the lawyers who can with some degree of confidence determine whether they wish to take part in Legal Aid. Finally, it must be remembered that the Plan is very young and its tremendous social utility is only beginning to be appreciated. The cost of the Plan will continue to reflect this appreciation as time goes by and the public must satisfy itself that it needs the services offered and is willing to allocate the resources necessary to pay for them.

However, in our view the time has come for us to recognize that Legal Aid is an important right that must be available to those who need it. The existence of a charitable element is inconsistent with the principle of the Plan and compromises the dignity of the recipient. The legal profession of this province has made an enormous financial contribution of some $14,260,000.00 in the first 6-1/2 years of operation of the Plan and it is with some regret, but with no hesitation, that we recommend the termination of this policy. The whole philosophy of the new model and partnership that we are recommending no longer welcomes charity of this nature and we therefore recommend the removal of the 25 per cent reduction. However, in one respect a lawyer doing Legal Aid work has an advantage over others — he always gets paid. In order to ensure that the credit-worthiness of the province does not provide him with an unfair advantage we recommend that the tariff fees payable should be reduced by 10 per cent to account for the fact that there will be no bad debts.

Finally on these points, to better ensure that experienced lawyers participate in the Plan we recommend that Regulations 85 to 87 relating to the employment of counsel be amended to incorporate a specific reference to the provisions of Notes A of both the criminal and civil tariffs. These Notes A provide that the tariff fees may be increased by the Legal Accounts Officer "in those cases where in his opinion an increase is justified having regard to all the circumstances including the nature of the work done, the complexity of the case, the result obtained and any other factor which would warrant an increased fee . . . " This list should be enlarged to include

specifically cases where the employment of counsel has been authorized. This Note would then be broad enought to permit the Legal Accounts Officer to pay counsel a fee closer to or equal to his normal charges in appropriate cases when the experience of counsel is necessary. In some measures this may ensure that experienced people will assist in cases that require their expertise.

THE TARIFF ITSELF

We are satisfied that tariff adjustments at the present time would not result in any appreciable reduction providing an overall saving to the Plan. It should be pointed out that in the 1973 fiscal year 80 per cent of all civil work related to domestic matters and this represented approximately 43 per cent of all fees and disbursements paid (excluding Duty Counsel charges). It is obvious that a considerable saving could result from law reform in both the substantive and procedural or administrative areas of divorce and other matrimonial disputes. The same is true in criminal and related matters.

COSTS — SECTION 19

Section 19 of The Legal Aid Act provides that if a legally aided person recovers costs in a proceeding, the extent of those costs is not to be affected by the fact that the recipient is legally aided and the costs are to belong to the Plan and not to the client (nor his solicitor). Sometimes the costs recovered are greater than the amount that the Plan must pay to the client's solicitor and this has created problems. In the first place, the Plan can make a profit in such cases and this has been criticized. Secondly, if it were not for the express statutory provision, the party paying the costs could successfully argue that he is not liable to pay any more than the client's solicitor is to receive.

Notwithstanding such arguments we are of the view that in such cases any excess recovered should continue to go to the Plan, not to the client or the solicitor. The Plan has few enough opportunities to recover its costs in particular cases and we think it only right that it should be permitted to retain "windfall" profits on the relatively few occasions when these occur. Furthermore, to provide otherwise could be to encourage undesirable practices in negotiations for settlement of litigation.

THE SETTLEMENT OF ACCOUNTS BY THE LEGAL ACCOUNTS OFFICER

We received a number of submissions from lawyers that the time required to settle and pay accounts was inordinately long. There is a lag now of several months between receipt of accounts and final payment. Some of this results from a past shortage of personnel, now overcome, but we agree that the process is time consuming and produces considerable friction with the profession, the result of which is at best a relatively modest saving to the Plan.

The Regulations provide that only the Legal Accounts Officer has the authority to settle accounts except for those of Duty Counsel. Section 6 of the Woods, Gordon Report to the Task Force contains some examination of this system and comments thereon. Because the number of cases examined in detail was rather small and the period chosen coincided with a period during which changes in the

tariff were made, it is unsafe to rely too heavily upon the detailed results of their examination. It does appear, however, that something on the order of one-third of all accounts submitted are adjusted and that a worthwhile saving to the Plan results.

One of the features of the process most irritating to lawyers, and understandably so, is the fact that at different stages of the examination process accounts are returned to lawyers or further information is requested before the full examination has been completed. This has gone so far on occasion as to forestall any examination of an account until a solicitor has remedied his error in sending in the wrong copy of a Legal Aid certificate, even though the information on each copy would be identical. A lawyer can thus be requested to re-submit an account a number of times before taxation is completed or payment is made.

There should be no great difficulty in making changes to the process so that each account is completely reviewed, and once just prior to settlement the lawyer is asked to correspond about his account if that be necessary. It may be different of course if satisfactory replies are not provided to the Plan when it has made inquiries.

It also appears that, in the past, something over 40 per cent of accounts have been for sums of $100.00 or less. Adjustments to this group of accounts as a whole have been insignificant in amount and they can scarcely have been worth the time consumed in examining them.

We endorse fully the recommendation of our consultants that the administrators of the Plan keep the accounts process under continuing review and that assistants to the Legal Accounts Officer be given responsiblity to approve accounts below a certain amount, thus freeing the Legal Accounts Officer to concentrate on the more complicated accounts of higher dollar value. The very small accounts, perhaps up to $200.00 might be processed only subject to a spot check system. The threshold value at which each of these processes would be applied could be kept under review in the light of the results obtained.

CHAPTER 11

GROUP CERTIFICATES

By virtue of both tradition and policy the law has exhibited a pronounced individual orientation. In a criminal setting the "accused" is individual; around his defence from the corporate attack of the State in respect of his performance of individual duty the panoply of individual rights has developed. On the civil side too the concept of tort and contract have generally raised rights and obligations in which individual citizens are the perceived actors. Group or representative action in the courts has been circumscribed by rule and has exhibited only modest potential.

Much of this has changed in the last twenty-five years. Not only has the opportunity for group court proceedings begun to develop but the growth of administrative tribunals has broadened the possibility of group action. Indeed in many cases such tribunals virtually dictate a representative or group application or response. In hand with this development we have recently observed the extent to which under new influences citizens have banded together to protect, enforce or expand their rights not only in the courts and tribunals but elsewhere — at the municipal council, the legislative committee and in the government bureau.

Historically it is easy to understand how group representation would be given a low priority under a Legal Aid statute. It is desirable however to review that priority.

In order to determine whether it is advisable to expand the availability of certificates to groups or persons representative of groups, it is well to look at the existing provisions of The Legal Aid Act.

By defining "person" as "an individual" the present Act purportedly excludes groups altogether from its operation.

Section 12 makes *mandatory* provision for the issuance of a certificate to persons (assuming financial entitlement) in respect of proceedings in a variety of courts. Section 13 on the other hand grants a *discretion* to the Area Director to issue certificates to persons otherwise entitled in proceedings before *inter alia,* quasi-judicial or administrative boards or commissions otherwise than by way of appeal. Section 14 grants a discretion to the Area Committee to grant a certificate in an appeal to *inter alia,* a quasi-judicial or administrative board or commission, when it sits in appeal.

Under the existing regime therefore and assuming entitlement a group or applicant representing a group must determine whether the proceedings contemplated are properly in a stipulated court, in a quasi-judicial or administrative tribunal or before a quasi-judicial or administrative tribunal upon appeal. In each case, the rights of the applicant will vary and the internal agency determining the availability of Legal Aid will differ.

Entitlement to Legal Aid certificates for groups and persons representative of groups is, however, clouded by Regulation 39 which, generally speaking, refuses the grant of a certificate to a person where "the relief sought can bring no benefit to

the applicant over and above the benefit that will accrue to him as a member of the public or some part thereof''. In those circumstances the refusal of certificates appears by virtue of the regulations to be *mandatory*. The refusal of a certificate however is by Regulation 39 made *discretionary* in those cases where, generally speaking, the applicant is one of a number of persons having the same interest under such circumstances that one or more may sue or defend on behalf of all, or where the applicant has the right to be joined in one action as plaintiff with one or more persons having the same right to relief. It must be that the intention of the latter portion of the Regulation is to entitle the Area Director to refuse a certificate to an applicant when equivalent relief is available to a person who would not by reason of financial circumstances be legally aided.

It would not be difficult to conclude that under the present Act and Regulations, an application made by a group or a representative of a group, whether in respect of proceedings in court or some other tribunal, raises complex and difficult questions for determination which include the following:

(a) Under which section of the Act is the application made, that is, a determination as to the appropriate forum in which the proceedings may or should be taken;

(b) Is the proceeding contemplated in substance an appeal from some other tribunal, person or agency;

(c) What is the benefit being sought;

(d) To what extent will the benefit accrue to the public or a part of the public as well as to the applicant;

(e) To what extent (at least in respect of court proceedings) is the action one in which others may be joined in certain eventualities;

(f) What is the financial eligibility status of the person representative of the group or the group itself;

(g) To what extent may the person applying be said to have available resources from other members of the group.

It is not surprising, therefore, that the question of the availability of Legal Aid under the provisions of the statute and the regulations to persons contemplating class actions in the Courts, or seeking to make group representations to other tribunals, has been a vexed and difficult one for the administrators of the Plan. While it is relatively clear that the Act would permit a certificate to be granted to a person in a class action, or representing a group before an administrative tribunal, the provisions of Section 39 appear to make the availability of certificates in these cases entirely theoretical.

In fact, the Legal Aid Committee of The Law Society has been confronted by a difference of opinion between counsel as to whether The Legal Aid Act and Regulations are presently broad enough to encompass group applications, particularly as they relate to proceedings before quasi-judicial bodies. As a consequence, Area Directors have lacked clear direction as to the manner in which they should deal with such applications as come to them. Although we have no precise

information before us as to the extent to which certificates have in fact been granted in class actions in courts or before administrative tribunals, it appears that where such certificates have been granted it has been done on the basis of individual application. The one pre-eminent exception to this principle was said to be an application made by a group of rate payers to York County Legal Aid, to provide representation before the Ontario Municipal Board in a dispute with a developer concerning the re-zoning of ''The Grange'' area of downtown Toronto. This application, while presented as a group application, was in fact disposed of by the Area Committee after very lengthy consideration, by the stratagem of providing a certificate to an individual without regard to the group which he in fact represented.

During the hearings of the Task Force it was very generally agreed that the present Legal Aid provisions respecting class actions and group certificates were unsatisfactory and required amendment. It was also apparent that the public interest demanded a simplification of the procedure as well as an expansion of the availability of legal services in this kind of case. Apart altogether from the traditional class action, it was put to us very forcibly that increasingly in a complex society legal initiatives and responses were being taken on a group basis. Indeed a number of public statutes such as The Planning and Development Act invite considerable citizen input into the process of governmental decision making, which is premised on the assumption that citizens individually and collectively must be consulted and involved in that decision making in order to assure that their rights are fully considered. It goes without saying that more and more, the intervention of lawyers is necessary because of the increasing complexity of these matters, and to assure the public and the groups involved that their views are being asserted efficiently and vigorously.

The kinds of proceedings with which we must be concerned divide generally into the following categories:

(a) The class action by which is meant an action commenced by a plaintiff on his own behalf and on behalf of the others of a defineable class as permitted by the consolidated Rules of Practice of the Supreme Court of Ontario;

(b) The group proceeding, being a proceeding in a court or in some other forum in which a number of people have similar interests at stake.

The second category causes the most difficulty and is in a sense the most important. It may run the gamut from zoning and re-zoning applications to tenants proceedings before housing standards committees, to environmental inquiries and to a very wide range of judicial and quasi-judicial proceedings permissible under a substantial number of statutes. Indeed it is not possible to impose any finite limits on the development of this kind of proceeding in the future.

Even if it were acknowledged that groups should in appropriate cases be funded by Legal Aid to advance or protect their group interests in judicial or quasi-judicial proceedings, a whole range of collateral problems arise. Many groups requiring legal assistance for these purposes are *ad hoc,* organized around the desire to pursue or respond to a specific problem. In addition, groups do not necessarily or uniformly reflect a common geographic or socio-economie background. It may very well happen for example that a group of citizens opposed to a re-zoning application that will substantially affect their interests, represents a

broad range of persons some of whom would, if considered as individuals, be financially ineligible for Legal Aid and others of whom would be entitled.

We think it right and just that the Plan respond to the almost universal sense that class actions and group proceedings should be, in appropriate cases, funded by Legal Aid. It is difficult if not impossible to lay down precise definitions which will determine the scope of the authority to grant Legal Aid in these cases and the characteristics of the group to which it will be available. We have, therefore, elsewhere proposed that applications for Legal Aid by groups in respect of class actions or in respect of other proceedings should be made direct to the Area Committee in each case. The Area Committee will after consideration grant or refuse the application, with the right to impose such terms and conditions as it considers appropriate in the case. The Area Director or the group or its representative may appeal the decision of the Area Committee to the Appeal Committee of Legal Aid Ontario.

To this scheme we append an exception, namely, that in the case of those proceedings in which limitation periods are imminent or in which by tradition or legislative policy adjournments are not granted for the purposes of obtaining legal assistance, the Area Directors should have the power to grant a Legal Aid certificate to the group or class in question, subject to review at the earliest possible date by the Area Committee.

We have concluded that the Area Committee is the appropriate body initially to determine the availability of Legal Aid for groups, on the basis that under the scheme herein proposed the Committee will be broadly representative not only of the practicing Bar but of the general public in the community in which the application arises. The purpose of an appeal provision to the Appeal Committee of Legal Aid Ontario is to guard against the possibility that a legitimate group asserting a legitimate right is not arbitrarily defeated in its application for Legal Aid by virtue of a policy judgment about the issue in question by the lay or professional members of the Area Committee possibly coloured by some unreasonable bias.

Equally, it is of value to ensure that a local issue, very important to the applicant and to the Area Committee, is not unduly emphasized to the point of being unwisely allocated a share of a limited provincial budget to the detriment of equally worthy claims in other areas. While our judgment is that such a situation is most unlikely to occur, an appeal provision will nonetheless protect legitimate applicants against any such danger.

We must leave to the Board of Directors of Legal Aid Ontario much discretion in this area. We do think it advisable though to set out the guidelines which in our judgment should be before the Area Committees when applications by groups in respect of class actions or other proceedings are made.

It follows, therefore, that as a legislative matter, The Legal Aid Act and Regulations should be amended by:

(a) Amending the definition of ''person'' as found in Section 1, so as to make it clear that ''person'' includes groups and that groups who have been incorporated are not by that fact alone disqualified from receiving the benefits of the Act;

(b) Removing the restrictive provisions of Regulation 39 herein before referred to;

(c) Setting up an application scheme in which discretion is vested in the Area Committee, the provision of an appeal therefrom, and authority for interim certificates.

By these amendments Legal Aid Ontario will be given a very broad mandate to assure the delivery of appropriate legal services to groups of citizens of the province. It must of course be left to the Board of Directors of Legal Aid Ontario to spell out in detail the parameters of the programme within the statutory frame work, having regard to budgetary and administrative considerations. We do not wish to part with the matter however without making some general observation about what is intended:

1. We do not think that it would be just to include within the Plan merely those groups who wish to pursue or are confronted by judicial or quasi-judicial proceedings. We strongly recommend that initially a proportion of the "global" budgetary resources be allocated for the purpose of supporting group representation before legislative bodies and before regulatory bodies. While it is no doubt true that such bodies do not in the traditional way involve a *lis* between the group and some agency or party, they nonetheless represent an area in which groups of citizens, appropriately represented, are entitled to be heard and where in the broad sense rights may be affected. Initially applications under this head will have to be governed by reasonably stringent guidelines bearing in mind the inevitable limitation of resources and our general recognition that such undertakings rank in priority behind the obligation of the Plan to meet the needs of citizens to assert and protect more traditional rights.

2. In the same sense we think it totally permissible, if resources are available, for Legal Aid to grant certificates to groups to enable them to obtain legal advice with respect to the organization of their own affairs. We are encouraged to make this observation by virtue of the fact that when their economic resources permit, groups within the community traditionally turn to the legal profession for assistance in such matters as incorporation. The matter can not be regarded as unimportant when it is noted that at least one important regulatory agency in this province has refused the right of groups to appear before it unless they are in fact incorporated. Among others, several Indian Bands represented to us that they had need for professional advice for the purpose of organizing their affairs, by incorporation or otherwise, in order to take advantage of various legislative benefits.

3. We also do not intend to exclude from consideration under the Plan assistance to groups who desire to invoke private criminal or quasi-criminal prosecutions. Many statutes establish public rights which can be enforced by criminal process. We see no reason why this mode of enforcement should be foreclosed to legally aided applicants. Indeed such prosecutions are frequently the most expedient and economical mode of advancing public rights.

4. We have elsewhere dealt with the question of costs in Legal Aid matters generally. We observe here however that The Judicature Act states that the courts' discretion as to costs may be exercised "subject to the express provision of any statute." The question of legal costs generally, and the extent to which they should be awarded by courts or tribunals, cannot really be said to be included in our

mandate. However, we are emboldened to suggest at this point that it is no longer self evident that costs should follow the event. So much of today's litigation involves contests between private individuals and either the state or some public authority or large corporation that the threat of having costs awarded against a losing party operates unequally as a deterrent. The threat of costs undoubtedly works heavily against groups who seek to take public or litigious initiatives in the enforcement of statutory or common law rights when the members of the group have no particular or individual private interest at stake. We would therefore propose an amendment to The Legal Aid Act casting upon a successful respondent in any such proceedings the burden of satisfying the court or tribunal before costs are awarded in his favour that no public issue of substance was involved in the litigation or that the proceedings were frivolous or vexatious.

We respectfully suggest that the time is ripe for a review of the whole question of costs by the Ontario Law Reform Commission or some other appropriate body. Meanwhile, we have no doubt that the spirit underlying the principle of Legal Aid and today's legislative recognition that public participation is desirable when serious public issues are at stake, justify a departure from the rule. To grant group certificates in proper cases is not enough. The deterrent threat of being mulcted in costs is often more than enough to inhibit a group of genuinely concerned citizens from proceeding against a public authority or a large corporation though vital public issues may be at stake.

We have no doubts about the equity of the principles we have proposed which tend to ensure that groups demonstrating a *bona fide* concern for matters affecting the public interest will not be penalized in costs if their efforts are unsuccessful. But to give such protection only to legally aided groups would give them an unwarranted advantage over others. Each such group might well be serving the public interest by testing public rights but the price of failure could be ruinous for even a wealthy group in the absence of such a rule as we propose.

We have more than once expressed the view that to grant nominal rights is worse than useless unless the means of enforcing them are also provided. Reasonable immunity from the penalty of costs should properly follow the assertion of such rights by a legally aided group; in equity this same immunity should be extended to non-legally aided groups on the same conditions. We therefore respectfully recommend that the necessary amendments be made not just to The Legal Aid Act but to The Judicature Act and other relevant statutes conferring on courts and tribunals the power to award costs.

We are conscious that the Board of Directors of Legal Aid Ontario will wish to spell out in detail the guidelines which in their judgment should bind the Area Committees when particular applications by groups for aid in respect of class actions or other proceedings are considered. Initially such guidelines will at least in part be dictated by the financial resources made available to the Plan. We therefore tentatively suggest merely a few of the considerations which in our view should apply:

1. The representative nature of the applicant;

2. The specific purpose for which Legal Aid assistance is being sought;

3. Whether the relief, remedy or other order sought represents a benefit of substance to the group making the application or to the public as a whole;

4. Whether the effect of granting a certificate may be to help to redress an apparent economic inbalance;

5. The availability of alternative sources of funding;

6. The past record of performance of the group (if any) and the competence of the group to represent its interest effectively;

7. The extent to which the group if judged as individuals would be financially eligible for Legal Aid;

8. Counsel's opinion as to the merits of the matter on which the groups seek representations;

9. Whether the group's interest is already represented or likely to be represented by some other person or group in the same or a comparable proceeding;

10. The importance of the issues at stake;

11. The probable cost to the Plan, taking into account the ability of the group to contribute.

It goes without saying that the members of the Task Force recognize that our recommendations here involve a significant departure from the traditional concept of Legal Aid. While this is no doubt true we are confident that the Task Force is responding to a legitimate and broadly felt need in our community. Care and caution must be exercised in the initial stages so that this programme is developed gradually, equitably across the province and with regard for the appropriate priority attaching to it. Care must be taken that abuses do not occur. Otherwise unfortunate results might follow that could discredit the Plan as a whole. We are confident however that without such initiatives, as outlined on the part of Legal Aid Ontario meaningful access to the legal system on behalf of public rights and interests will be effectively denied to a substantial segment of the population because of the high cost of private legal services.

Before parting with this subject we would like to add that we are not unmindful of the peculiar complications that often accompany group applications by reason of the need for expert evidence in so many matters of this type. Legal fees may be substantial but in many of these matters the payment of fees to experts for preparation of complicated technical cases and for testifying is a major share of the cost. We have no specific recommendations in this area and we recognize again that it is beyond our terms of reference. We simply point out that it is a major consideration in many decisions whether or not to proceed with group applications. It may be that when tribunals are considering applications under statutes that encourage public participation, at least a part of the cost of providing expert testimony should be the responsibility of the tribunal. However, we go no further than to suggest that this topic too might well be considered by any commission or other body charged with the task of reviewing the question of costs in litigation.

CHAPTER 12

EDUCATION, ADVERTISING AND INFORMATION

In 1973 the Ontario Legal Aid Plan spent $35,692.00 in "tracing and collection costs", and $13,895.00 on "information and publications". These figures fairly convey the importance that the government has attached to the advertising and education functions of the Plan; as the figures show, the Plan spent nearly three times as much on a largely futile attempt to dun its clients as it did on advertising the availability of its services.

We believe this scale of priorities is no longer acceptable, especially under the expanded Legal Aid scheme contemplated by this report. We agree with the Council of the British Legal Aid Society which sponsors a costly and, they believe, effective advertising and publicity effort: "It is not enough for the State to provide benefits, without taking steps to ensure that those intended to benefit are informed of their rights and encouraged to take advantage of them when in need of help."

But we believe the advertising and education function has a broader purpose than simply to make known the availability of the Plan to those who need it. Inevitably, the Plan must also concern itself with heightening the public's awareness of its legal rights and remedies and with improving the public's access to legal information.

Our opinion survey indicates that public awareness of the Plan's existence is fairly high, even though there is considerable confusion concerning its operation and its eligibility requirements. About three-quarters of the people surveyed claimed to have heard of the Ontario Legal Aid Plan. Nearly half of the respondents, however, said they would not know how to apply for Legal Aid if they did need it; and, although 36 per cent of the respondents believed the Plan offered a free choice of lawyers, another 36 per cent believed it did not.

These figures do *not* reveal a shocking lack of awareness of the Plan. Only about 14 per cent of Ontario's population, after all, ever use Legal Aid. The survey figures indicate that the present scheme has been "self-advertised" fairly successfully. Despite an almost total lack of advertising, and despite a legislative committee's recent refusal to approve a budget request of $40,000.00 for Legal Aid advertising, it seems apparent that in the criminal and matrimonial areas at least – and these are the areas where the bulk of Legal Aid monies have been spent – most of the people who need Legal Aid are sufficiently aware of the Plan to apply for it.

But Legal Aid Ontario, as we envision the system in this report, would offer a much wider range of legal services to a larger group of people. These services would be delivered not only through the traditional fee for service mode, but also through an expanded system of neighbourhood clinics. And the services available would embrace not only clearly perceived legal needs, such as litigious proceedings, but a whole range of needs that may be less clearly perceived, and are not presently being met adequately – including advice and assistance, and individual and group representation before boards and tribunals.

In the context of such an expanded Plan, Legal Aid Ontario's advertising and information effort ought to do more than simply announce its availability. It must also attempt to assist the public in identifying certain problems (particularly in such areas as welfare, unemployment insurance, workmen's compensation, landlord and tenant and consumer affairs) as problems which may be susceptible to legal solutions.

In addition, an advertising and information programme can function as an integral part of the advice and assistance process. For most people confronted with a problem – from a custody fight to a leaking roof that the landlord refuses to fix – the first step towards solving that problem is a phone call. In most cases, the person does not know who to call. And so he embarks on a "switchboard shuffle". He may call City Hall; or the police department (Toronto's police force receives several hundred thousand such calls each year); or Canada Manpower; or any one of dozens of agencies. It may be significant that, according to a survey conducted by the Legal Access Project of the University of Toronto Law School, Legal Aid offices are seldom approached with such inquiries. The Access to the Law study asked 100 people in Toronto, Kitchener and Lindsay where they would call for information regarding a set of ten hypothetical legal problems. Of the 1,361 replies that resulted (respondents were encouraged to give more than one answer for each problem) only 43 mentioned the Legal Aid office.

The same study has indicated that the quality of the legal information which a caller receives may vary widely, depending on which of a number of agencies he calls. We are not suggesting that Legal Aid Ontario should attempt to appropriate this field, by using advertising to encourage people with problems to "phone your Legal Aid office." But the system should attempt to upgrade the quality of the information dispensed by the various agencies involved in this work, perhaps by instituting a training programme, or by preparing a manual, for the people who actually respond to such enquiries – the switchboard staff at City Hall, police community service bureau, community switchboard and so on.

It is not the purpose of this report to recommend specific advertising or information strategies. That should be the task of the management team of Legal Aid Ontario. Our only legislative recommendation is that, in the enabling legislation establishing Legal Aid Ontario, an obligation to advertise and promote Legal Aid, and to inform the public of their rights and remedies under the law, be included among the corporation's stated aims and purposes. Such a statutory obligation would underscore the importance of this function, without unduly limiting or defining the extent of this obligation.

We would hope, however, that Legal Aid Ontario would discharge these obligations with the following policy considerations in mind:

1. Advertising and information should require the full time attention of specialists, probably through the establishment of a corporation information department.

2. This department's main task would be liaison and co-ordination with any advertising or public relations agency retained by Legal Aid Ontario, with publicity representatives at the Area Committee level, and with any outside organizations concerned with legal access.

3. Clinics and local Area Committees must be allowed the widest possible latitude in developing their own information programmes. Local conditions can vary so widely including languages, income levels and the nature of legal needs, that no central authority can prescribe the total information needs for a particular community. Local advertising programmes – using such media as brochures, handbills, community television and free newspaper publicity – would be aimed at making known the clinic's location and the services it offers, as well as promoting the broader awareness of legal rights and remedies.

4. In addition to this local input, however, Legal Aid Ontario should develop a province wide advertising and information programme, in association with an advertising agency. According to the ad agencies that were consulted in connection with the Peterborough Project, television is the most appropriate medium as the basis of a province wide campaign. But it would be very costly. According to one agency which submitted a proposal to the Peterborough Project, an Ontario wide "launch" using TV, newspapers, radio, brochures and the yellow pages of the phone book, would cost between $719,000.00 and $956,000.00 in the first year, depending on whether 30-second or 60-second spots were used. Quebec's Legal Aid Plan spent $350,000.00 on advertising in its first year of operation, and it may be that Legal Aid Ontario might decide that a launch campaign in this cost range might be more suitable.

At any rate, much can be done in promoting and advertising Legal Aid by utilizing less conventional and less costly techniques. Some of these techniques have already been used by individual Area Committees. In Ottawa, for instance, information on Legal Aid is appended to summons forms. In Kingston, the Provincial Court (Family Division) has experimented with mimeographed brochures advising those attending the Court of the availability of Legal Aid, the function of Duty Counsel, and the procedures of the Court. We recommend elsewhere in our report that this technique be extended to include all originating court documents. One of the most useful tasks an advertising and information department of Legal Aid Ontario could perform would be to develop other such techniques. It could be anything from a legal information column distributed free to daily and weekly newspapers, to an attempt to get legal information numbers listed at the front of local phone directories, along with the police and fire departments, to brochures on Legal Aid mailed out with welfare cheques.

Finally we note that the British Legal Aid Society spends roughly one per cent of its 30 million pound budget on advertising and information. We are not arguing that this ratio is necessarily appropriate for Legal Aid Ontario. But anything less, we suggest, is unlikely to fulfil the statutory commitment we propose.

CHAPTER 13

LEGAL AID IN METROPOLITAN TORONTO

The problems confronting Legal Aid elsewhere across the province of Ontario which have been discussed in some detail in other portions of the report are, when one comes to Metropolitan Toronto and the County of York, exaggerated and distorted by a number of factors. These exaggerations and distortions have made the problems confronting Legal Aid in Metropolitan Toronto unique both in their dimension and their complexity. First, the very size of Metropolitan Toronto makes it extremely difficult to apply the present scheme, which was perhaps designed for urban communities of more modest size in which the citizens and the Bar of the community would be able to achieve a certain unity or at least a common view in their approach to Legal Aid problems. Metropolitan Toronto is not in fact or in psyche one city; it comprises a dozen or more disparate, distinct and often isolated communities of varied social and economic character. Reflecting its very size and geography, the Provincial Courts (Criminal Division) and (Family Division) in which much of the work of Legal Aid is done, are not concentrated in one building or area, but are scattered across Metro and the County.

In addition the Bar lacks the kind of cohesion and sense of fraternity or community which typifies it in other Ontario cities for two reasons: first, the Bar is extremely large comprising more than half the practicing profession of the entire province; second, a substantial portion of the Bar exists not to serve the community and its members *per se*, but rather to provide highly skilled expertise, usually commercial or corporate in nature, to enterprises which have a provincial, national or international base. In addition, the Bar to a remarkable extent appears to be geographically concentrated in the downtown sector. While many members of the profession do carry on practice in other parts of the city and in the suburbs, they tend to be isolated from each other and from the bulk of the profession practicing in the large office towers in the downtown core. The phenomenon, thus created, of geographic or psychological inaccessibility, much commented upon, cannot help but be real to many of the poor or even to persons of modest means. The high proportion of specialists, government lawyers, corporate employees, etc. combined with the physical concentration in the downtown core, no doubt explain the low participation rate in Legal Aid: 38 per cent.

In addition, the workload in the traditional courts in Metropolitan Toronto is particularly heavy; much civil litigation which technically may be said to arise or develop in county towns across the province is in fact tried or settled in the City of Toronto because of the availability of counsel, trial judges and the convenience of the parties. In addition, an inordinately large proportion of the criminal litigation arising in the province is disposed of within Metropolitan Toronto. Apart from that, virtually all provincial tribunals and federal tribunals (that sit outside of Ottawa) sit more or less regularly in the City of Toronto, not only to hear the cases involving local residents, but frequently to hear cases that come from various other parts of the Province.

However, one dominant fact that distinguishes the Legal Aid problems of Metropolitan Toronto in the last decade from those of smaller centres has been the growth of community organization and the awareness of rights and the possibility of asserting them that has developed among the economically deprived or the poor. This social or legal awareness, sometimes called "legal activism," has been more

pronounced, more visible, more sophisticated and more successful in Metropolitan Toronto than anywhere else. It has been encouraged and fostered by "activist" social workers and community leaders, younger members of the profession, law students and law professors. We, of course, make no criticism of this phenomenon which has had many desirable results. We refer to it simply because it has exacerbated and created a focus for the problems of Legal Aid in Metropolitan Toronto. It is no accident that almost every private experiment in the delivery of legal services occurring within this province since Legal Aid was established seven years ago, has developed and flourished or floundered in Metropolitan Toronto. We need refer only to Parkdale Legal Services, People and Law, Neighbourhood Law Services, the Kensington Project and Injured Workmen's Consultants. There are a variety of others. Existing pressures on the Plan have thereby increased and proliferated.

THE RESPONSE OF THE LEGAL AID PLAN

One can have nothing but admiration for the determined and dedicated efforts made by the staff of Legal Aid at the provincial level and in the office of the Area Director for York County to respond to the Legal Aid needs of Metropolitan Toronto. In the first place, the administrators were obliged to implement a plan whose very structure was predicated on a community of modest size. The whole concept of the Area Director vested with power to make "discretionary" determinations as to Legal Aid availability, the Area Committee concept and structure, the schemes for appeals, the desirability for geographical accessibility and "outreach", the demands of C.S.S. assessment requirements were concepts almost unmanageable in a city of two million persons. Any attempt to apply the Plan strictly according to its terms might well have threatened to shipwreck its availability or effectiveness in Metropolitan Toronto. The ingenuity of Mr. Donkin and his staff in confronting these myriad difficulties was extraordinary and persistent. The successes of the Plan in Metropolitan Toronto are in very large measure attributable to him and his staff; its failures are inherent in the Plan itself.

York County is the Plan's administrative unit for Metropolitan Toronto, but it also includes a substantial suburban and rural population. The Area Director from the commencement of the Plan was a full time salaried solicitor. In York County, the Area Director's office has been forced to establish a substantial administrative and clerical staff and to employ a number of solicitors in addition to the Area Director on a full time basis. This staff is largely occupied day in and day out dealing with applications for certificates, preparing appeals to the Area Committee, reporting to the Provincial Office on the operation of the Plan in York County and providing advice and assistance of a legal and non-legal nature to persons who apply for certificates or who simply telephone or attend upon the Area Office looking for some kind of help or direction. In addition to these duties, the Area Director's office performs all the other functions required of the Area Director, including the preparation and supervision of Duty Counsel panels and liaison with C.S.S. The single permanent office of the Plan is located in second floor quarters at Richmond and Sheppard Streets in the heart of the business community in downtown Toronto.

Very recently and belatedly, the Area Director has received authority to open another office in the northern part of Metropolitan Toronto which will in effect act as a sub-division of the Area Director's office designed to serve the needs of some of the population of Metropolitan Toronto residing in the outlying areas.

The York County Area Committee is, of course, an extremely large one and by virtue of the very great volume of work it is obliged to sit in panels. We are glad to observe that the Plan has been successful in Metropolitan Toronto in conscripting as Area Committee members not only leaders of the local Bar, but also a large number of lay persons of varied background and experience. Indeed, the York County Area Committee is, we think, unique in the province in numbering among its members a past "consumer" of Legal Aid services. There is no doubt in our mind, having observed the operation of the Area Committee and spoken to many of its members, that the lay persons in York County have made a significant contribution to the work of the committee in both legal and non-legal matters that come before it.

To cope with the problems created by the volume of work, the Area Director has been able to refer a very large number of cases for which Legal Aid is not available, (on other than financial grounds) or where advice and assistance of a summary nature is required, to the clinics operated by the Student Legal Aid Society at the University of Toronto. The Society operates 18 such clinics on a periodic or part time basis and York University operates several more clinics in the same way. In addition, the Area Director's office has itself opened clinics which are operative more or less once a week in outlying sections of the city in which summary legal advice is available and where certificate applications can initially be made. Some of these clinics have opened adjacent to or in conjunction with Community Social and Welfare Agencies.

In addition, it is not without significance that the Area Director's office has achieved a most desirable level of co-operation with "private" Legal Aid clinics, such as Parkdale, Neighbourhood Legal Services, People and Law and the Kensington Office of Thompson, Rogers. The level of co-operation developed and exhibited in Metropolitan Toronto leaves no doubt in our minds that a "mix" of the traditional fee for service delivery technique with the salaried or rotating solicitor clinics is not only possible but very desirable.

THE UNMET NEEDS

There is no doubt that the "ummet needs" which we have discussed earlier in this report demonstrably exist in large measure in Metropolitan Toronto. One aspect of the unmet needs which is most pressing in York County is that of readily available summary advice and assistance. The need for such service has provoked the same difficulties, writ large, in Metropolitan Toronto as are found and have been commented on in other communities. However, the Area Director's office in York County is in addition the recipient of literally thousands of telephone and in person inquiries, which arise out of problems which are not primarily of a legal nature. Notwithstanding the fact that the full range of government, municipal and social welfare services are available and have a reasonably high profile in Metropolitan Toronto, the Area Director's office appears to be a focus for persons who have problems and who are not aware of the various service and social welfare facilities or do not know to which agency or government to turn.

In addition, the York County office receives hundreds of telephone calls, in which simple advice as to the provisions of the law, statutes or regulations is requested. Young people want to know how old they must be before they can marry without parents' consent; old people want to know what material they must have in order to apply for the Old Age Pension; people who think they may be

eligible for welfare assistance, want to know where to apply for it; families inquire as to how to get on the list to obtain Ontario Housing accommodation; the range of questions is endless. It is a great tribute to the Area Director's office that instead of responding by the assertion that the question does not raise a legal problem, every effort is made to respond to inquiries of this type, with a marked degree of success.

It is our intention that the recommendations contained in this report should of course be applied to Metropolitan Toronto. We believe, that the general design of the expanded Plan is fully applicable to Metropolitan Toronto notwithstanding its geographic, administrative, economic and population differences. There will, of course, be some modifications of administration:

1. THE REGIONAL DIRECTOR

We propose that the Municpality of Metropolitan Toronto should by itself be constituted a region as that term is understood and developed in the section of this report dealing with the structure of the new Plan. It therefore follows that a Regional Director will be appointed at the head office of the Plan, whose exlusive responsibility will be generally to supervise the work of Legal Aid in Metropolitan Toronto.

2. AREA DIRECTOR

Until the present, the administrative head of Legal Aid in Metropolitan Toronto has been an Area Director. We think that it is appropriate to divide the Municipality into five or six divisions, each of which will be administratively headed by an Area Director. Each of these divisions will of course encompass a population that will much exceed most of the counties of this province. We think, therefore, that most of the Area Directors within the Municipality of Metropolitan Toronto should be salaried permanent servants of the Plan. It may very well prove possible, perhaps in the northern regions of Metropolitan Toronto, to have some Area Directors who are members of the local Bar who will be able to act on a part time basis. The Area Directors will report to the Regional Director.

3. AREA COMMITTEE

It would be administratively consistent to constitute an Area Committee to direct and complement the work of each Area Director. We think, however, that this proliferation of committees would be undesirable. We therefore propose, that there should be one Area Committee as at present, with which all the Area Directors will work.

The work of the Metropolitan Toronto Area Committee which is now very great, will of course be substantially greater under the expanded Plan. In fact, in recent years the Metropolitan Toronto Area has adopted a structure in which its members break off into panels to conduct the various responsibilities of the committee under The Legal Aid Act. We think that this sensible *ad hoc* arrangement should be formalized and legislative authority should be given (if that is necessary) to the Area Committee of Metropolitan Toronto to establish the following sub-committees:

1. An Executive Area Committee which will be responsible for the development of policy recommendations in all areas for submission to the Area Committee as a whole.

2. An Area Sub-Committee on criminal appeals.

3. An Area Sub-Committee on civil appeals.

4. An Area Sub-Committee group applications.

5. Such other Area Sub-Committees as the workload may dictate.

4. DECENTRALIZATION

The present Legal Aid Committee already has underway a Plan to decentralize the operation of Legal Aid in Metropolitan Toronto. We think that the objective of this Plan is a sound one. We would contemplate that each Area Director would work from an office located in his geographical area, which will be for the purposes of that area, the offices of the Plan. It may as a practical matter be desirable for an Area Director within Metro to have more than one permanent Legal Aid office under his jurisdiction and in his area. We think that the hours at which these offices are open should be determined by reasonable regard for the convenience of Legal Aid applicants. We think it most undesirable that there should be any division of responsibility between various offices, but that each office should provide all the services of the Plan to applicants. While administrative efficiency might require some division of responsibility between offices, the unfortunate result would probably be a tendency to refer an applicant from one office to another. This undoubtedly leads to frustration. We also think that real consideration should be given to opening Area offices in appropriate places which are attractive and available to members of the ethnic community. In this regard, and again in appropriate places, there should be staff members (at least at the clerical level) who have the ability to speak the native languages of the area clientele. We should emphasize that the ''decentralized'' Area Director's office does not perform the same local function as a Neighbourhood Legal Aid Clinic if there be one in the area. It therefore follows that while they may, it will not necessarily be appropriate for them to occupy the same premises.

One of the possible consequences of decentralization is that an applicant adjudged unqualified at one office will seek out and apply at another office. This frustrates the appeal procedures and leads to duplication of work. A central control for Metropolitan Toronto should be developed to monitor such potential abuses or to develop adequate screening procedures.

5. LAWYER PANELS

We have dealt elsewhere with recommendations respecting panels which should be applicable in Metropolitan Toronto as well. We add only one qualification; choice of counsel should be as important to the client as the ability of the public to make such a choice is to the solicitor. In an attempt to be more directly responsive to the needs of the client and consistent with our view that Legal Aid and those who provide it should be reasonably accessible to the client, we propose that each Area Director of Metropolitan Toronto should maintain a list of Legal Aid counsel located in his geographical area, as well as a list of counsel that are available elsewhere in the city.

6. DELIVERY TECHNIQUES

Elsewhere in this report we have developed our recommendations respecting the various complementary techniques which seem suitable in any expanded Plan:

private Bar rotating clinics, salaried lawyer clinics, lay advocates, etc. Because of the pronounced need it is very likely that Metropolitan Toronto will become the testing ground for the development of many of these programmes, and the Board of Directors will want to assess carefully the mode by which these techniques work in Metropolitan Toronto before their use is expanded across the province. We only wish to add three comments about the development of these techniques in Metropolitan Toronto.

1. In Metropolitan Toronto there are existing organizations and clinics, many of which are not staffed by solicitors but which are independently operated under direction of community organizations or well intentioned individuals. We think that as a start some of these organizations which already have an existing "clientele" and which have developed significant relationships with their particular communities should in the manner we have described elsewhere be invited to come within the ambit of the Plan. It is not therefore our intention that the clinic delivery technique should enter into competition with existing quasi-legal service agencies, but rather where possible it should attempt to lend support to these and enter into cooperative arrangements with them. It seems to us this is particularly appropriate in ethnic communities.

2. We have referred elsewhere to the necessity for community education about legal rights and remedies. We can think of no more fertile ground for such a programme than Metropolitan Toronto and by its introduction here much that is useful can no doubt be learned about the implementation of such a programme in other communities.

3. We are of the view that the Regional Director for Metropolitan Toronto should have one additional responsibility. He should be funded and encouraged to develop a research facility which will be designed to collect and expand knowledge about poverty law problems and their solutions. There is no doubt that much of the expertise relating to these matters exists in Metropolitan Toronto and the development of appropriate research bureaus will assure that it can be shared not only with Area Directors and their staffs across Metropolitan Toronto but also with representatives of the Plan in other communities in the province.

CHAPTER 14

OTHER RECOMMENDATIONS

AREA BOUNDARIES

In the section called Structure of the Plan, we noted that at least at the outset the existing Areas should continue. However, we recommend that a review of the boundaries of these Areas should be made in order to determine whether consolidation of areas is feasible and whether certain portions of the population can better be served by another area centre than their present one. For example, there are portions of the District of Kenora lying east of Winisk that may be better served from Cochrane, large portions of the District of Parry Sound lie closer to North Bay and could more efficiently be annexed to the District of Nipissing; the northern portions of the County of Frontenac are closer to Perth than to Kingston and some of the southeastern counties along the St. Lawrence could be consolidated. The object of such a review would be of course to ensure that the Plan is accessible in the most convenient way to the greatest possible number of citizens. In conducting the review local law associations should be consulted in order to determine the way in which geographic areas are actually served by members of the Bar.

APPLICATIONS BY NON-RESIDENTS

The Act now provides (Section 16(9)) that applications by non-residents are dealt with by the Director at Toronto. This procedure results in unwarranted delays and the Area Directors in those regions most affected, Windsor, Cornwall, Ottawa, etc. have devised various ways of eliminating the inconvenience. For the most part, applications are approved ultimately although the need for some control is recognized. We recommend that applications by non-residents who are temporarily within the province may be dealt with by the Area Director (or Area Committee, if applicable) most accessible to them and not by the central administration. This would provide the control that would be absent if solicitors could grant such certificates while at the same time local administration will eliminate untoward delay in most cases.

INFORMATION RESPECTING PANELS AND REFERRALS

While reviewing the present Plan, we have already commented on the difficulty that many clients have in selecting a lawyer from the civil or criminal panels. These lists contain no information about the lawyer's special areas of practice and to many clients therefore the freedom of choice is meaningless. We fully approve The Law Society's recent decision to create new lists which will show with respect to each name the number of years of practice, the proportion of time devoted to various areas of practice, the number of persons in the firm and the address. The Plan must keep abreast of the work being done by The Law Society in the area of specialization and should make representations to it so that the best interests of the clients of Legal Aid will be served.

No matter how much information is made available, some clients will still require assistance. We recommend that the Area Director be authorized to develop and provide a referral service similar to the one now operated by The Law Society in Toronto. By this technique, clients could then be directed to a specific office on a rotation basis.

NON-DISCLOSURE

Regulation 137 now provides, "No information furnished by or about an applicant for or recipient of Legal Aid or the fact that a client is receiving Legal Aid shall be disclosed other than as may be necessary for the proper performance by any person of his functions under the Act and this Regulation".

When the Plan was first introduced there was uncertainty as to how it would be received and how people legally aided would be treated by their own solicitors, other solicitors, the courts and the public at large. This Regulation was introduced to ensure as well as possible that the fact that a person was legally aided would not prejudice him in any way. As it turned out, disclosure was often made in the Criminal Courts in explaining requests for remands, and experience indicates that no prejudice has resulted. In fact, it would appear that it makes no difference in treatment whether a person is legally aided or not.

On the other hand, there may be substantial benefits in eliminating the non-disclosure provision. While good sense and common decency demands that information that a person is being legally aided will not be bandied about, those who are best able to detect abuses will be assisted by disclosure. Judges and lawyers will be able to advise the Plan of suspected abuse and this alone may constitute a deterrent.

Accordingly, we recommend the repeal of Regulation 137 and echo this pre-existing recommendation of both the Ontario Law Reform Commission and The Law Society.

THE PETERBOROUGH PROJECT

Just prior to the establishment of this Task Force The Law Society had proposed an experiment in Peterborough County. The purpose was to study ways of liberalizing access to summary legal advice through conventional law offices and through clinical facilities. The scheme involved preliminary advertising of the availability of summary advice for any legal matter by going directly to any lawyer. The lawyer did not require the approval of the Area Director and could bill up to one and a half hours of time. The lawyer was to establish financial eligibility himself.

Participating lawyers would exhibit a logo in their office window and beside their name in the telephone book. In addition to preliminary advertising, a survey was to be conducted to determine the public's awareness of the Plan. After several months a further survey was to be undertaken to determine the effectiveness of the advertising campaign.

In October, 1973, The Law Society sought approval of this project and its budget from the Attorney General but approval has been deferred pending the report of this Task Force.

We are of the view that this proposal was sound and, but for the creation of this Task Force, should have proceeded. The components of the experiment, i.e., summary advice, assistance through lawyers' offices directly, the elimination of discretion, the elimination of a financial assessment by the Department of Community and Social Services, advertising and the logo are all matters that we have

previously discussed and assessed. Furthermore, an analysis of public awareness and attitudes has in part been developed by the report prepared for us by the Contemporary Research Centre.

We have commented earlier on the variety of techniques for the provision of summary advice and assistance that should be available to the expanded Plan. We have also suggested elsewhere that some experimentation and flexibility should be encouraged in determining how this need can best and most economically be met. It may very well be, therefore, that the Board of Directors will want to pursue the Peterborough Experiment or one like it as a partial realization of this objective.

THE STATUTORY POWERS PROCEDURE ACT

Since its enactment in 1971, The Statutory Powers Procedure Act has established basic procedures for statutory tribunals designed to provide protection for the rights of individuals. A number of minimum rules were defined to ensure protection including, the right of parties affected by statutory power decision: (i) to be present; (ii) to be heard; (iii) to be heard by impartial persons; (iv) to have counsel at the hearing; (v) to have the evidence recorded, and; (vi) to have a decision with reasons.

From the outset it was recognized that proceedings before certain tribunals would be exempt from the application of these minimum rules especially in cases where the rights of persons were already provided by the rules of the tribunal itself or where application of the rules was totally impractical. Although an exemption was originally requested, The Legal Aid Act has not been exempted for either of the above reasons.

The new Legal Aid Act, as we see it, will contain a number of procedures which will involve the exercise of a statutory power of decision primarily in respect of decisions as to whether Legal Aid will be granted. To some extent the Act itself will provide safeguards, i.e., a full range of appeals in the conduct of which assistance will be available from Duty Counsel. In addition, it must be recognized that many decisions as to whether a person will have Legal Aid will be made by individuals applying pre-determined standards of eligibility in circumstances where the decisions must be made with dispatch.

We therefore recommend that at least at the outset The Statutory Powers Procedure Act should not apply to the new Legal Aid Act. We fully recognize the importance of the rules of natural justice to the applicant for Legal Aid. However, the realities of the situation must also be considered and steps must be taken to ensure that the system does not fail because it becomes bogged down by procedure.

THE HANDBOOK ON SOCIAL WELFARE AGENCIES

Very early in our task we recognized the fact that a large number of the problems of the poor are not legal in nature and can be better resolved with the help of non-lawyers. Furthermore, with increasing awareness on the part of both governments and the private sector, a large number of social welfare agencies have sprung up in the last ten years. Many of these agencies have made valuable contributions toward assisting the poor; their existence and capabilities should be part of every lawyer's common knowledge.

To this end, a very valuable service would be performed by ensuring that every lawyer doing Legal Aid is provided with information as to these facilities in his area. In our view, the Legal Aid Plan should undertake this task itself or provide the initiative and financial support to some other body to do so.

By way of example, The Community Information Centre of Metropolitan Toronto has published a Directory of Community Services and 7,500 copies have already been sold. This kind of publication would without doubt assist any lawyer dealing with the poor.

TELEPHONE CALLS FROM OUTLYING REGIONS

The Plan now permits Area Directors in some areas, particularly in the north, to accept collect telephone calls from persons who cannot conveniently come to their offices. This is a practice which should be encouraged and extended to all parts of the province where lawyers or the Area Director are at any distance. With lawyers being able to grant certificates, part of the problem should be solved but this and other methods should be encouraged if the result is to put the public in touch with the Plan.

WHO MAY DO THE WORK?

A common complaint that we received was that someone other than the lawyer who accepted a certificate did the work for the client. Clients often viewed this as an example of how they received "second-class treatment" because they were on Legal Aid.

The Act does not specifically provide that only the lawyer accepting the certificate must do the work. In fact, with the provision relating to articled students and with Regulation 100(1)(a) it seems clear that in theory others may do some or all of the work. We have no doubt that often in practice this is the result.

We do not view this as extraordinary because it does not depart from the way a client is dealt with by a lawyer in private practice. There are, however, two safeguards that should be applied. First, the client should be advised by the lawyer accepting the certificate how the work will be done. Second, and most important, all work done for the client must be *directly* supervised by the lawyer accepting the certificate. This last point at least should be clearly spelled out in the legislation.

NOTICE OF LEGAL AID

In many places in this report we have made reference to the need of the Plan to communicate its existence and availability to the citizens of the province. This need is of paramount importance for two main reasons: first, Legal Aid is useless to a needy person with a legal problem if he does not know about it and accordingly cannot take advantage of its services; second, delayed acquaintance with the Plan leads to delays in the courts and in the overall administration of justice.

We recommend that a notice of the existence of the Plan including details as to how to contact it in each area should be attached to or be a part of every legal document which initiates a proceeding and which is served on a party. In civil court proceedings this would require that the notice accompanying the Writ, Claim or

Petition or the Notice of Motion which institutes the proceedings be amended in such terms. In administrative or quasi-judicial proceedings before administrative tribunals this information could well accompany the Notice of Hearing advising the recipient when the matter will be heard. In criminal matters, such notice would accompany the Summons. In cases where Duty Counsel is available in the court the notice should also advise the recipient to arrive sometime in advance of the court opening (the time will depend on the case load) in order to meet with Duty Counsel who similarly should be available.

An amendment to The Legal Aid Act is required to provide for such notice in provincial matters; in the criminal field which is of course within the jurisdiction of the Parliament of Canada, the federal government should be asked to amend the Criminal Code accordingly.

LAW REFORM FUNCTIONS

In the course of our hearings and in considering many of the individual written submissions made to us we became acutely aware of the extent to which criticisms, ostensibly of the delivery of Legal Aid, were in reality directed to the substantive law. In some of the areas that have given us most difficulty, e.g., the provision of access to the law for groups, the reduction of delay and possible "abuses" in the operation of the criminal law, and the delay, expense and confusion in the application and administration of domestic law resulting from divided jurisdiction, it is clear that major improvements can only be made by changes in the substantive law. The administrators of a Legal Aid Plan, as well as those concerned in the delivery of services under such a Plan, are in a position to see more clearly than most many of the law's failure to reflect the needs of present day society and particularly of its poorest members. We recommend, therefore, that Legal Aid Ontario be fixed with responsibility for establishing close liaison with national and provincial law reform commissions, to their mutual benefit.

STATISTICAL REPORTS AND PROCEDURES

In the report of the Ontario Law Reform Commission on the impact of Legal Aid on the courts (Administration of Ontario Courts, Part 3, page 176) a recommendation is made that more statistical information concerning the Plan's effect on the courts should be compiled and furnished on an on-going basis. We endorse that recommendation although we note that already more sophisticated records are being developed; by reference to the Plan's computerized records, our consultants were able to develop a good deal of information which the Commission found to be unobtainable. For example, actual participation rates of lawyers listed on Legal Aid panels by area was readily obtained for us. With the removal of the ban against disclosure of the fact that a person is legally aided comparative statistics between private and legally aided litigation and prosecutions should be more readily available and, for the first time, quantitative data regarding so called abuses could be developed.

We concur in the suggestion that records be kept of court dispositions of costs in legally aided proceedings. Should the independent study of costs that we have recommended be undertaken, such data would be of considerable assistance to any investigating body.

LANGUAGES

In the section on Education, Advertising and Information we have already expressed our views with respect to the need for advertising and information programmes. Closely related is the problem of ensuring that communications to various segments of the public should be in other languages where necessary in addition to English.

In various areas of the province there are substantial numbers whose first language is other than English; some measures should be taken to ensure that advertising and information directed to them, interviewers who will be speaking with them and documents that they will have to complete or execute are prepared or in the case of interviewers are competent in the applicant's primary language.

The need in each case can best be identified by local Area Committees. Once needs are established special care must be taken to ensure that they are met. This, of course, does not mean that every piece of advertising, every form and every officer of the Plan must be multi-lingual. All that is required is that there be sufficient flexibility in these areas to deal with actual requirements to thereby ensure that no one is denied assistance because of a failure of communication.

CHAPTER 15

SUMMARY OF MAJOR RECOMMENDATIONS

STRUCTURE OF THE PLAN

1. The control and administration of the Legal Aid Plan should be vested in a statutory non-profit corporation named Legal Aid Ontario.

2. The Board of Directors of Legal Aid Ontario should comprise twenty persons including the Chairman and Vice-Chairman. Nine members of the Board of Directors should be appointed for fixed terms by The Law Society of Upper Canada. Nine members of the Board and the Chairman and Vice-Chairman should be appointed for fixed terms by the Lieutenant Governor in Council on the nomination of the Minister of Justice and Attorney General.

3. As an interim measure The Legal Aid Act and The Law Society Regulations should be amended to permit the appointment by the Minister of Justice and the Attorney General of lay members to The Law Society's Legal Aid Committee.

4. The Chairman of the Board of Directors, either a layman or a lawyer, should serve full time in that capacity and be compensated at the same scale as a Judge of The Supreme Court of Ontario. His term of office should be seven years during good behaviour; he should be eligible for re-appointment once.

5. The Vice-Chairman, a lawyer if the Chairman is not, should be appointed for the same term as the Chairman.

6. Whichever of the Chairman or Vice-Chairman is a lawyer shall be nominated by the Minister of Justice and Attorney General from a panel of three persons proposed by The Law Society of Upper Canada.

7. The Chief Executive Officer of Legal Aid Ontario should be appointed by the Board of Directors for such term and under such conditions as it deems appropriate.

8. A number of Regional Directors of Legal Aid Ontario should be appointed who should report to the Chief Executive Officer. The Regional Directors should be particularly charged with the supervision of the administration of the Plan in the geographical regions assigned to each of them.

9. The office and duties of Area Director in each of the Areas (corresponding roughly to Counties and Districts under the existing Legal Aid Plan) should be continued. The Area Director should have the same power to issue Legal Aid Certificates as is granted to members of the practicing Bar but he should subject to appeal have a special power to revoke certificates granted by others. The Area Director should continue to act as Secretary of the Area Committee and be responsible to the Regional Director for the administration of the Plan in his Area.

10. The Area Committee for each Area should be continued with certain changes in structure and authority. It should be comprised of a minimum of eight persons, appointed by the Board of Directors of Legal Aid Ontario, half of whom are members of The Law Society and the local Bar, and the other half of whom are lay persons.

11. In communities where University Faculties of Law exist the Area Committee should in addition include at least one representative of the student legal aid society nominated by it.

12. Apart from its present appellate functions, the Area Committee should be authorized to request of the Board of Directors the type of delivery of legal service required in its Area, to determine whether Legal Aid Plan services should be provided to group applicants, to propose changes in procedure and reform in the law, to hear representations and receive reports from clinics or clinic advisory boards where those have been established, to maintain liaison with social agencies in the community, to promote local awareness of the services of the Plan and to report annually to the Board of Directors with respect to their functions and the administration of the Plan in their Area.

13. Members of the Area Committee should be paid a per diem allowance.

14. The Board of Directors of Legal Aid Ontario should appoint one or more Appeal Committees each consisting of three members of the Board. The function of the Appeal Committee will be to hear appeals by applicants for Legal Aid or the Area Director from determinations of the Area Committee with respect to certificates issued or dealt with by the Area Director or any matter in which the issuance of a certificate is within the discretion of the Area Committee.

15. Legal Aid Ontario should at least once in each fiscal year submit its budget to the Minister of Justice and Attorney General for the next succeeding fiscal year. While the Provincial Government will maintain overall budgetary control, such control should not be utilized by Government to dictate the specific service activities or priorities of Legal Aid Ontario.

16. The Provincial Auditor should continue to examine and report to the Legislature upon the accounts for financial transactions of Legal Aid Ontario.

17. The provisions of The Legal Aid Act respecting the establishment of the Attorney General's Advisory Committee should be repealed.

18. The Board of Directors will report annually on the operation of the Plan to the Minister of Justice and Attorney General for Ontario. The Report should be tabled in the Legislature.

19. In addition the Board of Directors should periodically provide an information report to The Law Society of Upper Canada.

COVERAGE UNDER THE PLAN

20. 1. Certificates should be issued as a matter of right to those financially eligible in respect of proceedings or proposed proceedings:

(a) in the Supreme Court of Ontario;

(b) in the court of any county, district or judicial district in Ontario;

(c) in a Surrogate Court;

(d) where the applicant is charged with an indictable offence or where an application is made for a sentence of preventive detention under Part XXI of the Criminal Code (Canada);

(e) in the Federal Court of Canada;

(f) where the applicant is charged with a summary conviction offence under the Criminal Code except offences under Sections 159, 161, 162, 163, 164, 175, 185, 190(4), 191, 193, 194 when he has been previously convicted of any of such offences;

(g) where the applicant is charged with a summary conviction offence under an Act of the Parliament of Canada when he could have been proceeded against for the same offence indictably;

(h) when the applicant is charged with a summary conviction offence under the Narcotics Control Act and under Sections 34, 41 and 42 of the Food and Drug Act;

(i) in a Provincial Court (Family Division);

(i) to an infant;

(ii) to any party to any proceedings under The Deserted Wives and Children's Maintenance Act, The Child Welfare Act, The Training Schools Act, The Parents Maintenance Act and The Reciprocal Enforcement of Maintenance Orders Act;

(iii) to any parent concerned in any application under the above Statutes;

(j) before a quasi-judicial or administrative officer, board or commission otherwise than in an appeal thereto if it is the first such proceeding for the applicant;

(k) for contempt of court;

(l) to those who, while on a Legal Aid certificate, succeeded in a judicial, quasi-judicial or administrative proceeding and are faced with an appeal launched by another party to those proceedings.

21. Certificates should be issued as a matter of right to a person otherwise entitled thereto in matters not necessarily related to judicial or quasi-judicial proceedings but involving the drawing of documents, negotiating settlements or giving legal advice wherever the subject matter or nature thereof is within the scope of the professional duties of a barrister and solicitor.

22. Certificates may be granted subject to the discretion of an Area Committee to persons otherwise entitled thereto;

(a) in an appeal to any of the Courts of the Province or of Canada or to a Judge sitting in Court or Chambers, to the Assessment Review Court regarding the assessment of property that is the residence of the applicant

and from that Court to the Judge of the County or District Court and from the decision of that Judge to the Ontario Municipal Board or to quasi-judicial or administrative board or commission;

(b) before a quasi-judicial or administrative board or commission subsequent to the first application to any such body;

(c) to group applicants subject to guidelines such as we have suggested;

(d) to persons for additional services arising out of a matter for which that applicant has already been granted a certificate;

(e) in any matter referred by the Area Director to the Area Committee.

23. Certificates may be granted subject to the discretion of the Area Director to persons otherwise entitled thereto in any matter:

(a) where a certificate is not available as of right;

(b) where a certificate is not prohibited and

(c) where the power to grant a certificate is not reserved to the Area Committee.

24. Legal Aid certificates should not be available:

(a) in proceedings wholly or partly in respect of defamation, breach of promise of marriage, loss of service of a female in consequence of rape or seduction, alienation of affection or criminal conversation;

(b) in relator actions;

(c) in proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty in whole or in part may be payable to the person instituting the proceedings;

provided that if the applicant is a defendant in any of the matters enumerated in (a), (b) or (c) above Legal Aid should be available as of right if the applicant is financially eligible;

(d) in proceedings relating to any election;

(e) in summary conviction proceedings under a by-law of a municipality as defined in The Municipal Affairs Act or of a metropolitan, district or regional municipality or local board thereof;

(f) in summary conviction proceedings under any Regulation passed pursuant to an Act of the Parliament of Canada or the Legislature of Ontario;

(g) in summary conviction proceedings under The Liquor Control Act (Ontario), and The Liquor Licence Act (Ontario);

provided that an Area Committee may grant a certificate in respect of any of the matters enumerated in (e), (f) and (g) above if upon conviction there is likelihood of imprisonment or loss of means of earning a livelihood and the accused faces severe economic deprivation.

DELIVERY OF LEGAL SERVICES

25. It is the duty of the Board of Directors of Legal Aid Ontario to select and establish the appropriate technique or techniques for the delivery of Legal Aid Plan services in the Legal Aid Areas in Ontario. In the performance of this duty it will be assisted and guided by the recommendations of the Area Committees.

26. Properly trained and supervised para-professionals should be utilized in the delivery of legal services at neighbourhood legal aid clinics, in Small Claims Court and in the offices of the Provincial Court (Family Division).

NEIGHBOURHOOD LEGAL AID CLINICS

27. A neighbourhood legal aid clinic may be established in any community or place on the terms and conditions established by the Board of Directors.

28. Area Committees should be encouraged to make recommendations to the Board of Directors regarding the advisibility of and the terms and conditions for the establishment of neighbourhood legal aid clinics in their Areas.

29. The Board of Directors after consultation with the appropriate Area Committee will establish the staff requirements, the special projects and priorities, if any, and the funding of each neighbourhood clinic.

30. The Law Society Act, Regulations and policies should be amended so as to permit each neighbourhood clinic, subject to the approval of the Board of Directors, to advertise the availability of its services.

31. In staffing neighbourhood clinics it should be permissible for the Board of Directors to appoint to each neighbourhood clinic salaried solicitors, articling students, para-professionals, social and other professional workers and clerical staff. Each neighbourhood clinic should, however, be under the immediate direction of a lawyer.

32. Neighbourhood clinics should be obliged to receive applications for Legal Aid Certificates.

33. Any neighbourhood legal aid clinic may be assigned special priorities in its community subject to consultation between the Area Committee and the Regional Director. Such priorities may require restriction on the kind of work for which the clinic will be available, emphasis on particular clientele or specialized projects.

34. Salaried solicitors on the staff of the neighbourhood legal aid clinic will be entitled to accept and conduct an applicant's case without restriction. Para-professionals and articling students may subject to direction of the Clinic Director accept and conduct cases in tribunals in which they are entitled by law to appear.

35. The Regional Director and the Area Director in consultation should establish guidelines for and strictly control the case load of the staff professionals and para-professionals in each neighbourhood clinic.

36. At each neighbourhood clinic each applicant must be advised of his right to seek Legal advice or counsel from a member of the private Bar listed on the Legal Aid roster as well as from the clinic staff. However, to reduce the case load in the neighbourhood clinic the Clinic Director should be instructed to encourage applicants to consult the private Bar in traditional areas of service.

37. Each neighbourhood clinic should be encouraged to establish a Community Advisory Board comprising both lawyers practicing in and lay members residing in the community that the clinic is designed to serve. The function of such a Board should be exclusively advisory.

38. The Director of each neighbourhood clinic should report at regular intervals to the Area Committee and through the Area Director to the Regional Director upon the operations and functions of his clinic. The Clinic Director should also have the right to communicate directly with the Board of Directors of Legal Aid Ontario.

39. The Board of Directors of Legal Aid Ontario should be authorized to constitute a student legal aid society or a branch thereof as a neighbourhood legal aid clinic and to provide appropriate funding and staffing therefore, and to establish the terms and conditions of its operation.

40. The Board of Directors of Legal Aid Ontario should be authorized to receive applications for funding and grant funding where appropriate to existing clinics or neighbourhood law offices established by private firms or institutions under such terms and conditions as the Board of Directors in each case consider appropriate.

41. The Board of Directors of Legal Aid Ontario should develop a programme to be conducted through the Community Colleges in conjunction with The Law Society of Upper Canada for the academic training of and through existing neighbourhood legal aid clinics the practical training of lay advocates or para-professionals.

42. The neighbourhood legal aid clinic may establish a roster of lawyers engaged in private practice who desire to work in the clinic or conduct its cases on a rotating basis.

DUTY COUNSEL

43. On the principle that Duty Counsel should be available where substantial rights are in jeopardy, Duty Counsel should be available in the Provincial Court (Criminal Division) and (Family Division) on a regular basis.

44. Duty Counsel should also be available in The Small Claims Court on a regular basis and in the County Court when it deals with applications under The Landlord and Tenant Act as an on-call service.

45. Area Committees should consider utilizing civil Duty Counsel to serve special needs in their areas such as house-bound or bed-ridden persons, psychiatric

hospitals, prisons or airports (for immigration matters). Civil Duty Counsel should also be utilized to serve rural areas by regular pre-advertised visits.

46. Civil Duty Counsel should be made available to assist those who have been refused Legal Aid to appeal such refusal.

47. Reference to the availability of Duty Counsel in the courts should be contained in all documents initiating proceedings in those courts which are served on individual citizens. Information about the availability of Legal Aid generally should be part of all court documents initiating proceedings.

48. Duty Counsel in the courts should be provided with adequate physical facilities to perform the functions of interviewing clients in private, taking applications for Legal Aid and preparing submissions on behalf of clients. Sufficient physical indication of his presence should be available in order to ensure that those in need of his assistance realize that he is there. If Duty Counsel are available on a 24 hour basis to assist persons under arrest, the police should be required to co-operate in ensuring that the accused is able to call them. Duty Counsel may be assisted by law students, articled students and properly trained supervised paraprofessionals where appropriate.

49. An instructional handbook relating to the functions of Duty Counsel in a variety of settings should be prepared and distributed. Courses of training should be offered to Duty Counsel especially in the criminal and family court areas.

50. In uncomplicated cases, and with the consent of the client, duty counsel should be permitted to proceed with the trial of a matter without the necessity of a certificate being issued.

LEGAL AID IN CRIMINAL MATTERS

51. Fee for service is the most appropriate system for serving criminal cases at the present time. This delivery technique should continue to be generally utilized.

52. The Legal Aid Plan should not interfere with the right of an accused to freedom of choice of counsel irrespective of whether he is singly or jointly charged. In the same sense the Legal Aid Plan should not interfere with the right of an accused to elect trial in any court which is available by the substantive criminal law.

53. Recidivists should not be denied access to the Legal Aid Plan.

54. There should be a constant review and updating of the Legal Aid criminal panel lists.

55. The Board of Directors of Legal Aid Ontario should have the right to control the number of criminal certificates outstanding in the hands of any lawyer at any given time.

STUDENT LEGAL AID SOCIETIES AND ARTICLED STUDENTS

56. The service of law students and articled students, where available should be utilized by the Legal Aid Plan as assistants to Duty Counsel both in and out of the

courts, in Small Claims Court, as assistants to lawyers working on certificates at clinics and in other appropriate areas.

57. The Legal Aid Plan should establish a permanent funding arrangement with the law school whose students are being utilized.

58. The services of articled students, when utilized, should continue to be paid for on a tariff basis.

APPLICATIONS FOR LEGAL AID FINANCIAL ELIGIBILITY AND ASSESSMENT

59. Applications for Legal Aid should not only be received by but in fact where entitlement exists as of right, certificates should be granted by the appropriate processing officers. Certificates are presently issued exclusively by the Area Directors. Certificates "as of right" should be issued not only by Area Directors, but primarily by Duty Counsel, lawyers participating in the Plan, and in special cases by para-professionals.

60. The financial assessment procedure now implemented by the Ministry of Community and Social Services should be terminated. In its place a simplified assessment procedure should be developed based on tables of eligibility.

61. Financial eligibility should be determined by applying a formula which takes into account income, net capital assets and the number of dependents. The formula should include a scale of contributions by applicants commencing at a selected threshold and advancing progressively to a ceiling.

62. The criteria for financial eligibility should be published and form part of the information about Legal Aid regularly available to the public.

63. Financial eligibility should be determined by the person to whom the application is made at the time the application for Legal Aid is made.

64. The applicant should disclose his financial position and should make oath as to its accuracy; persons taking such applications should, of course, be granted the power to administer the oath. As a further safeguard, a system of spot-checks should be instituted and substantial penalties should be provided for deliberately misleading the Plan as to financial worth.

65. Contributions by applicants must be realistic and collected early so as to avoid collection procedures later when collection is frequently more difficult. The bulk of current bad debts should be written off.

66. A universal, prepaid plan of coverage, public or private, designed to serve middle income persons is not appropriate at the present time. Rather the Legal Aid Plan's contribution ceiling can be adjusted as resources dictate, to cover increasing numbers of the middle income segment of the public.

PAYMENT OF LAWYERS UNDER LEGAL AID

67. Payment of lawyers doing Legal Aid work should continue to be based on tariffs but the 25% charitable contribution by lawyers should be eliminated.

However, lawyers' fees should be reduced by 10% to account for the fact that there are no longer any "bad debts".

68. Senior members of the Bar should be encouraged to participate in the Plan as counsel; their fees should be tied to the regulatory provisions which give the Legal Accounts Officer discretion to increase the fees beyond the appropriate tariff amount.

69. In order to expedite the payment of accounts, assistants to the Legal Accounts Officer should be given the power to settle accounts below a certain sum; on the other hand, accounts below a small figure, say $200.00 should be settled and paid automatically subject only to a spot check system.

GROUP CERTIFICATES

70. Class actions and group proceedings should be funded in appropriate cases.

71. Applications by groups for aid should be made to the Area Committee with an appeal by the group or the Area Director to the Appeal Committee of Legal Aid Ontario.

72. Subject to the availability of funds:

(a) groups may be assisted not only to litigate but also to make representations to legislative and regulatory bodies.

(b) groups may be assisted to obtain advice in the organization of their own affairs.

(c) groups may be assisted to invoke private criminal or quasi-criminal prosecutions.

73. In group proceedings, if the group is unsuccessful, the burden should rest with the successful party who requests costs to satisfy the Court or tribunal that no public issue of substance was involved or that the proceedings were frivolous or vexatious.

74. The Director of Legal Aid should determine the criteria for granting assistance to groups and guidelines for the assistance of Area Committees but the following factors should be considered:

(a) the representative nature of the applicant;

(b) the purpose for which legal assistance is sought;

(c) whether the relief sought represents a benefit to the group or to the public as a whole;

(d) whether the granting of a certificate will redress an economic imbalance;

(e) the availability of alternative sources of funding;

(f) the past record of the group and its ability to adequately represent its interests;

(g) the extent to which the individual members of the group would be eligible for Legal Aid;

(h) counsel's opinion as to the merits of the group's contemplated action;

(i) whether some other group or individual will likely represent the applicants' interest;

(j) the importance of the issue;

(k) the cost to the Plan.

EDUCATION, ADVERTISING AND INFORMATION

75. Legal Aid Ontario should advertise its availability and should also undertake an educational programme to inform members of the public of their rights and remedies.

76. Legal Aid Ontario should assist other agencies who dispense information relating to legal problems to upgrade the quality of such information by preparing manuals and delivering training courses.

77. Area Committees should be encouraged to develop their own information programmes geared to local needs.

LEGAL AID IN METROPOLITAN TORONTO

78. Metropolitan Toronto should be constituted a separate Region within Legal Aid Ontario; a Regional Director should be appointed whose exclusive responsibility will be to supervise the Metropolitan Toronto Region.

79. The Metropolitan Toronto Region should be divided into five or six Areas, each of which would be headed by an Area Director. Area offices should be placed as required within the region.

80. There should be one Area Committee for Metropolitan Toronto Region; the Area Committee should however have the legislative authority to establish subcommittees to regulate its various functions.

81. Each Area should maintain lists of local lawyers serving on panels in addition to lists of lawyers for the other Areas in the Region.

82. Efforts should be made, where appropriate, to permit existing organizations and clinics now functioning in the Region and now providing Legal Aid or quasi legal aid services to come within the ambit of the Plan.

83. Community education programmes should be introduced and tested in the Metropolitan Toronto Region; case experience in poverty law should be monitored and researched there.

OTHER RECOMMENDATIONS

84. Existing Areas should continue but there should be a review of boundaries with a view toward consolidation where feasible.

85. Applications for Legal Aid by non-resident persons should be dealt with at the local level and not by the central administration.

86. Local Area Directors should develop and provide referral services to assist those who cannot make a meaningful choice of lawyer.

87. The Regulation respecting non-disclosure should be repealed.

88. The Board of Directors should consider undertaking the ''Peterborough Project'' in order to determine and monitor the best techniques for delivering ''advice and assistance''.

89. At the outset, The Statutory Powers Procedure Act, 1971, should not apply to proceedings under The Legal Aid Act.

90. Legal Aid Ontario should undertake to prepare a handbook of those social welfare agencies and other organizations available in the province to provide assistance to poor people. This handbook should be available to every lawyer doing Legal Aid work in the province.

91. The practice of accepting ''collect'' telephone calls from persons who cannot conveniently come to the office should be encouraged and be extended to all parts of Ontario where lawyers or Plan personnel are inaccessible.

92. All work undertaken for a client should be performed or *directly* supervised by the lawyer accepting the Legal Aid Certificate.

93. In both civil and criminal matters the document or process by which a proceeding is commenced should contain notice of the availability of Legal Aid and some detail as to how aid may be obtained. The Legal Aid Act should be amended accordingly and the Parliament of Canada should be asked to amend the Criminal Code accordingly.

94. Legal Aid Ontario should be fixed with the responsibility for establishing close liaison with Federal and Provincial Law Reform Commissions.

95. More statistical information concerning the effect of the Legal Aid Plan on the Courts and the administration of justice should be compiled on an on-going basis. With the repeal of the amendments respecting disclosure it should be possible for the Plan to develop comparative statistics between private and legally aided litigation and prosecution, so that quantitative data can be developed.

96. Area Legal Aid Committees should identify and respond to particular language needs within their communities, so that in cases where there are substantial numbers whose first language is other than English, advertising information and legal aid documents should be available to such persons in their primary language.

CONCLUSION

Our Report makes final disposition of those matters referred to us by the Attorney General, with one important exception. A major concern of this Task Force has been the question of the delivery of Legal Aid services to native people in Ontario. A number of difficulties have prevented us from transmitting our conclusions with respect to this important area at this time. They will, however, be forwarded to you shortly in the form of a second report.

In the Appendix to the Report we list all those who submitted briefs and made representations to the Task Force. We express our thanks to them. We owe a special debt of gratitude to the staff of The Ontario Legal Aid Plan, who from the beginning have given generously of their time and who have responded promptly to our requests for information.

We must express our appreciation for the work done by our own staff and we acknowledge with particular gratitude the contributions made by our Executive Secretary, Marie Corbett, Counsel to the Task Force, Ian Scott, Q.C., and his associate Stephen Goudge.

Finally, we are indebted to Miss Patricia Frechette of the Judges' Staff at Osgoode Hall for her patient re-typing of the Report in its final form.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

The Honourable Mr. Justice John H. Osler

Peter deC. Cory, Q.C.

Stanley Sadinsky

Dr. Daniel G. Hill

Mrs. Anne Scace

Alexander Ross

Geo. E. Wallace, Q.C.

ADVERTISEMENTS & NOTICES

Advertisements inviting submissions to the Task Force were published twice in the Ontario Reports, all daily newspapers, ethnic newspapers and French language weeklies in Ontario.

Particular efforts were made to elicit response from all individuals, associations and organizations who have an interest in the delivery of legal services. These were contacted directly by letter to invite response.

In addition to letters to those directly involved with the delivery of legal services, such as the judiciary, all past and present Legal Aid Directors and members of Legal Aid Committees, Law Associations and other legal groups, a list was compiled of all groups who were involved with users of or potential users of Legal Aid. These Associations and Organizations number 1,618. All Indian Councils and Bands and major Indian Organizations were contacted. A total of 3,011 direct invitations to respond were made and these are listed in Appendix A.

SUBMISSIONS

Two hundred and eighty-five (285) individuals, associations and organizations made written submissions to the Task Force of which 120 were from Toronto. Some submissions included questionnaires and original research data. These submissions are filed with the report, and those making submissions are listed in Appendix B.

PUBLIC HEARINGS

Public hearings were held during the months of March, April, and May, 1974 in Toronto, Sudbury, London, Ottawa, Kingston, Hamilton, Windsor, Thunder Bay and Kenora. These sittings of the Task Force were publicized in area newspapers and on radio and television stations prior to our attendance. In addition 870 persons or groups who corresponded with the Task Force received schedules of hearings. A total of 105 oral submissions were made to the Task Force. The Organizations and persons who appeared are shown in Appendix C.

The Task Force was engaged in public hearings for 11 days in Toronto and for 14 days outside of Toronto.

MEETINGS

The Task Force attended informally at various meetings and briefing sessions in addition to the public hearings in nine cities. (See Appendix D).

In addition members were encouraged to and did attend at York Area Committee meetings, Metropolitan Toronto, Legal Aid Clinics and Duty Counsel at Don Jail, Old City Hall and Metropolitan Juvenile and Family Court.

REPORTS

In addition to Oral and Written submissions the Task Force considered written material submitted and listed in Appendix E.

RESEARCH

The Task Force directed the following original research projects which are filed herewith:

(1) Study of various aspects of Legal Aid in Ontario by Woods, Gordon & Co., Management Consultants. The Report deals with the cost of the Legal Aid Plan including the cost of services and Ministry of Community and Social Services Legal Aid Assessment, collection and Legal Account processes, professional participation, service usage and Legal office overhead costs and Clinics.

(2) Report of a Study on Public Attitudes, Opinions and Behaviour in Relation to the Ontario Legal Aid Plan by Contemporary Research Centre. The Report deals with:

(a) The problems people face and the extent to which legal action is perceived as appropriate;

(b) Attitudes towards lawyers and the considerations that discourage consultation with lawyers;

(c) The extent of awareness of, knowledge about and experience of the Ontario Legal Aid Plan;

(d) Perceptions of and attitudes towards the Ontario Legal Aid Plan;

(e) Attitudes of and specific features of Legal Aid systems.

(3) Report on the Delivery of Legal Services to Native Population in Ontario by Professor Harvey Savage. This report deals with Legal Services for off-reserve natives, more urbanized areas, rural reserve areas, the northern fly-in reserves, overall structure and funding. The report also contains 15 major recommendations and was heavily relied on by the Task Force in reaching its conclusion.

(4) Legal Aid Statutes in Canadian Provinces; a Comparison Study by Hillel David.

MATERIAL FILED WITH REPORT

(1) Written Submissions (See Appendix B)

(2) Transcripts of representations at public hearings (22 volumes) (See Appendix C)

(3) Written Materials submitted (See Appendix E)

(4) Original Research Reports (See page (ii))

APPENDIX A

INVITATIONS TO RESPOND CATEGORY

	NO.	
LEGAL AID		
Legal Aid Plan Area Directors, past and present	53	
Legal Aid Area Committee members, past and present	445	498
JUDICIARY		
Judges of the Small Claims Court	3	
Judges of Provincial Court (Family Division)	58	
Judges of Provincial Court (Criminal Division)	113	
Judges of the County and District Courts	103	
Judges of the Supreme Court of Ontario	41	
Federal Court Judges	14	
Masters	9	341
LEGAL		
County and District Law Associations in Ontario	47	
Deans of Law Schools	6	
Law Society of Upper Canada	1	
The Advocate's Society	1	
Women's Law Association	1	
Crown Attorneys for the Province of Ontario	37	
Ontario Branch of Canadian Bar Association	1	
Sheriffs and Court Registrars Association	1	
Law Reform Commission of Ontario	1	
Law Reform Commission of Canada	1	
Small Claims Court Clerks Association	1	98
		937
ASSOCIATIONS & ORGANIZATIONS		
Women's Associations Charitable Associations Ethnic Groups Community Social Services Groups Consumers Groups Community Groups and Associations, etc.	1,618	1,618
OTHER		
Members, The Provincial Parliament		117
Councils of Ontario Municipalities, Cities and Towns		118
Indian Councils and Bands		102
Indian Organizations		10
Boards and Tribunals in the Province of Ontario		50
Departments of Sociology		15
Newspapers		42
Ontario Chamber of Commerce		1
Ontario Provincial Police		1
		3,011

APPENDIX B.

WRITTEN SUBMISSIONS

Ackar, Christopher
Alcholism & Drug Addiction Research Foundation
Alex, Lawrence
Algar, Beverly
Alliare, Armand J.
Anjo, Judge J. W. P., Provincial Court (Criminal Division)
Armstrong, James M.
Armstrong Indian & Metis Association
Armstrong, Rose
Arnup, The Honourable Mr. Justice John, Supreme Court of Ontario
Arvay, Leslie G., Notary Public
Association Canadienne-Francaise De L'Ontario
August, Judge W. D., Provincial Court (Criminal Division)
Auld, The Honourable J. A. C., Minister of the Environment
Barnes, Q.C., Robert E.
Barnum, Judge F. R., Provincial Court (Criminal Division)
Bednarz, John
Benais, Professor Raoul
Birchcliffe Community Concern Office, Toronto
Bird, Peter
Bloor-Bathurst Information Centre
Bradshaw, John R., Crown Attorney
Brodie, Gwen
Brown, Mrs. M.
Burgard, Mervin F. J., Solicitor
Burns, Q.C., P. J., Area Director, Temiskaming
Caldbick, Q.C., S. A., Crown Attorney
Caldwell, Barbara
Cambrian College of Applied Arts and Technology
Cameron, Juliet
Campling, Fred
Canadian Arthritis & Rheumatism Society
Canadian Cancer Society, Ontario Division
Canadian Citizenship Federation
Canadian Civil Liberties Association
Canadian Council of Teachers of English
Canadian Dental Association
Canadian Environmental Law Association
Casey, Brian, Past Chairman, Preventative Law Program, University of Ottawa
Chadwick, James B., Area Director, Ottawa-Carleton
Children's Aid Society of the City of Guelph and the County of Wellington
Chomut, Kenneth George, Student-at-Law
Chown, Judge Gordon, Small Claims Court
Christopher, Mrs. F.
Clare, Judge James A., County of Simcoe
Clark, Frank

Clendenning, Judge J. L., Provincial Court (Criminal Division)
Clinical Training Committee, and C.L.A.S.P., Osgoode Hall Law School, York University
Collins, Q.C., Victor B., Crown Attorney
Company of Young Canadians
Consumer Protection Bureau, Ministry of Consumer and Commercial Relations
Cooper, Mary Lou
Cornwall Resource Centre
Corporation of the City of Sarnia
Corporation of the Town of Kirkland Lake
Corporation of the Town of Milton
County of York Law Association
Creighton, Judge W. W., Provincial Court (Family Division)
Currie, Q.C., J. G., Area Director, Simcoe
Curve Lake Band
Cuthbert, Glenn
Dawson Trail Rural Council
Deacon, Don, M.P.P. York Centre
Department of Continuing Education, York University
District of Algoma Law Association
District of Kenora and the Kenora Law Association
Docherty, Judge T. L., Provincial Court (Family Division)
Dolson, Mrs. M. G.
Donkin, Q.C., W. Reid, Area Director York County
D'Orazio, Gary A.
Drake, James
Dunlap, Senior Judge J. C., Provincial Court (Criminal Division)
Durnin, Dr. Robert A.
Egener, Judge Frederick, T., Provincial Court (Family Division)
Elizabeth Fry Society, Toronto Branch
Emerson, Bruce
Employment Standard Branch, Ministry of Labour
Endicott, N. A., Solicitor
English-Speaking Union of the Commonwealth in Canada
Environmental Hearing Board
Faculty of Law of the University of Ottawa, Common Law Section
Faculty of Social Work, University of Toronto
Family Service Agency of Hamilton
Family Service Association of Metropolitan Toronto
Federation of Arab Canadian Societies
Federation of Citizens Associations
Ferguson, Nora
Florian, Yvonne M.
Forest, N. J., Solicitor
Fournier, Margaret
Fowler, Judge A., Provincial Court (Criminal Division)
Fraser, Sheila B.
Freidland, Dean M. L., Faculty of Law, University of Toronto
Funnell, Q.C., J. P., Area Director, Northumberland & Durham Counties
Gaetz, Q.C., N. D., Crown Attorney
Grand Council Treaty No. 9
Grant, Gretta J., Area Director, Middlesex County

Grant, W. C., Area Director, Peterborough County
Green, Q.C., W. H., Area Director, District of Parry Sound
Gregor, David A.
Haines, The Honourable Mr. Justice Edson, Supreme Court of Ontario
Hambleton, James A.
Hamel, Robert R., Law Student, University of Ottawa
Hamilton Area Compensation Association
Hamilton & District Central Information Service
Hamilton Status of Women Committee
Harper, Edna L.
Harrison, Frances E.
Hartt, Barry
Hawthorne, Matthew
Hays, Judge Glenn, Provincial Court (Criminal Division)
H.E.L.P., Kleinburg
Henderson, Q.C., Gordon F.
Henry, Edwin M., Official Guardian, Ministry of the Attorney General
Henry, Jim
Hilderley, Allan
Hooker, Donald B.
Hunsley, Norman E.
Hunt, Robert
Hunter, George, Solicitor
Hutchinson, Q.C., James F.
Indian Community Secretariat, Ministry of Community & Social Services
Information Orillia
Ingram, William M.
Jachowicz, Joseph T.
Jacobson, Tuula
John Howard Society of Hamilton
John Howard Society of Windsor
Johnson, Professor John M., Faculty of Law, Queen's University
Kaill, Professor, R. C., College of Social Science, University of Guelph
Karasiewicz, L.
Kay, Anne
Kazanjian, John A.
Keewatin District Office, Ministry of Community & Social Services
Keith, The Honourable Mr. Justice Donald, Supreme Court of Ontario
Kendall, Hazel
Kent County Bar Association
Kerr, Q.C., The Honourable George A., Solicitor General
King, Basil
Klien, Q.C., Arthur O., Crown Attorney
Knights, Mr. & Mrs. James
Koenigsberg, M., Daniliunas, M., Fursman, N., } Students, Faculty of Law, University of Western Ontario
Kreines, Gertrud
Lafrance, Girard
Lafrance, J. P. Oliver
Lakehead Social Planning Council
Landry, A. W.

Lang, Edward Perry Anthony
Law Society of Upper Canada
Leach, Walter
Lefebvre, Kenneth P., Area Director, Brant County
Legal Aid Area Committee for the County of Simcoe
Legal Assistance of Windsor, Faculty of Law, University of Windsor
Lieff, Mr. Justice A. H., Supreme Court of Ontario
Lin, Raymond C. K.
Llong, Jozef
Local Council of Women of Ontario
Lodba, David
Long, Russell N.
MacBeth, John P., M.P.P. York West
MacDonald, John A. B., Solicitor
MacDonald, Judge W. A., Provincial Court (Criminal Division)
MacDonald, Mildred
MacMurchy, Doug
McChesney, Robert Allan, Solicitor
McCoy, Elizabeth, Native Courtworker, Sault Ste. Marie Indian Friendship Centre
McGuire, Sam
McLellan, Judge L. A., District of Kenora
MacMahon, Judge Joseph P., Provincial Court (Criminal Division)
McSheffrey, Bernice
Mamo, Alfred A., Solicitor
Marks, Dolores
Marrocco, Frank N., Solicitor
Martin, Professor J. David, Department of Sociology, Lakehead University
Martin, Senior Judge Walter M., County Court
Meehan, Judge Michael R., County Court
Mental Health/Metro, Canadian Mental Health Association
Matheson, Judge John R., County Court
Milne, Ronald D.
Ministry of Community & Social Services
Moravian Indian Council
More, Gordon T.
Mothers on Budgets, Thunder Bay
National Anti-Poverty Organization
Neighbourhood Information Centre, Toronto
Neighbourhood Legal Service, Toronto
Nevin, Mary
Nipissing Band of Ojibways
Nipissing Regional Council of the Association Canadienne-Francaise De L'Ontario
North Bay District Office, Ministry of Community & Social Services
North York Public Library
O'Malley, Mrs. G.
Ontario Association of Chiefs of Police
Ontario Association of Children's Aid Societies
Ontario Federation of Indian Friendship Centres
Ontario Land Compensation Board
Ontario Legal Aid Plan

Ontario Municipal Social Services Association
Ontario Nursing Home Association
Ontario Provincial Police
Ontario Tuberculosis & Respiratory Disease Association
Orillia Public Library
Orsini, Basil V., Consultant-Arbitrator
P.A.C.E., Belleville
Paknis, G. S.
Paquette, Mrs. C.
Parkdale Community Legal Services
Parrot, Harry, M.P.P. Oxford
Pell, Mrs. William
People and Law, Toronto
Peterson, Judge H. D., Provincial Court (Criminal Division)
Pitch, Harvin D., Solicitor
Por, Thomas A., Area Director, Elgin County
Price, Professor Ronald R., Correctional Law and Legal Assistance Project, Faculty of Law, Queen's University
Provincial Council of Women of Ontario
Read, William
Red Lake District Inter Agency Committee
Reed, Q.C., G. W., Vice Chairman of Appeals, Workmen's Compensation Board
Riutta, Toivo
Roach, Charles C., Solicitor
Robichon, George H.
Robinson, Lyman R., Acting Dean, Faculty of Law, Queen's University
Rogers & Rowland, Barristers and Solicitors
Ruby, Clayton C., Solicitor
Ruff, John
Rupert, Rose
Ryan, Professor H. R. S., Faculty of Law, Queen's University
St. Louis, Roger
Sano, E. S.
Sarnia Anti-Poverty Coalition and P.U.S.H.
Savage, Professor Harvey, Executive Director of Dalhousie Legal Aid Service, Faculty of Law, Dalhousie University
Schachter, Raymond D., Solicitor
Seneca College of Applied Arts & Technology
Shapiro, Judge B. Barry, County Court
Slusarchuk, William
Smith, R. J.
Social Planning Council of Metropolitan Toronto (Storefront Committee)
Social Planning & Research Council of Hamilton & District
Spinks, Sarah
Stanov, N.
Steinberg, Judge David M., Provincial Court (Family Division)
Stewart, The Honourable William A., Minister of Agriculture
Stickler, P.
Stoysich, Lazar
Street Haven, (Toronto)
Stuart, Q.C., Peter B., Area Director, Muskoka County

Students' Legal Aid Society, University of Western Ontario
Students' Legal Aid Society Faculty of Law, University of Toronto
Student Legal Aid Society, University of Ottawa.
Sudbury Regional Information Centre
Summerby, Q.C., Robert W., Area Director, Leeds and Grenville Counties
Tamime, Ibrihim
Thiry, L.
Thompson, Judge Benjamin C., Provincial Court (Family Division)
Thunder Bay Law Association, Legal Aid Committee
Trebilcock, Professor Michael J., Faculty of Law, University of Toronto
Turnbull, Andy
Tyo, Harold
Tyrell, Q.C., J. R.
Ukrainian Canadian Business & Professional Association
Ukrainian Canadian Welfare Services Incorporated
United Community Services of Peterborough & District
United Steelworkers of America, Sudbury Area
University Legal Aid Clinic, University of Western Ontario
Vanclieaf, Verna
Vanier Centre for Women
Velanoff, John, Coordinator, Legal Services Administration, Fanshawe College
Victoria Park Community Organization
Virag, Stephanie
Waisberg, Judge Harry, County Court
Walmsley, Judge Robert J. K., Provincial Court (Family Division)
Waugh, Sheila
White, Judge P. D., Provincial Court (Criminal Division)
Wilson, Ed
Wojick, Jan
Wood, Wilbur H.
WoodGreen Community Centre, Toronto
Workmen's Compensation Board
Wragg, Helen
Wright, The Honourable Mr. Justice Peter, Supreme Court of Ontario
Wyrzykowski, Raymond, Area Director, Lambton County
Yanaky, Barry P.
York County Legal Aid Area Committee, Group Three
Young, E. G.
Ziegel, Professor Jacob S., Osgoode Hall Law School, York University

APPENDIX C.

ORAL SUBMISSIONS

DATE	LOCATION	NAME
March 11, 1974	Toronto	Parkdale Community Legal Services Speaker: Professor F. Zemans Victor Paisley, Esq., Solicitor Student Advisor to Parkdale Students Legal Aid Society of University of Toronto Speakers: Ms. Leslie Yager Robert Prichard, Esq. David Abker, Esq. Phil Zylberberg, Esq.
March 12, 1974	Toronto	Mrs. Gwen Brodie Member of York County Legal Aid Committee Zolton Szobosloi, Esq. John Ruff, Esq. Joseph Caplan, Esq.
March 13, 1974	Toronto	Birchcliffe Community Concern Speaker: Ms. Joan Clarke, Administrator Mrs. J. Wright York County Legal Aid Office Street Haven Speakers: Ms. Gail Bridgeman Ms. Edythe Prentice Ms. Betty Dyce Single Fathers Association Speaker: Lawrence Calcut, Esq. President Community Information Centre Speaker: Miss Mollie Christie Mrs. Barbara Caldwell

DATE	LOCATION	NAME
March 13, 1974	Toronto	Laszlo Ujpal, Esq. People & Law Research Foundation Inc. Speakers: Tom McDonnell, Esq. Miss Marion Falconbridge Dick Nellis, Esq.
March 25, 1974	Toronto	Harold Hunt, Esq. Mrs. Y. M. Florian Allan D. Rogers, Esq., Solicitor Elizabeth Fry Society Speakers: Mrs. G. Carruthers Miss P. Haslem Frank Marrocco, Esq., Solicitor Joseph K. Tamassy, Esq. Ibrihim Tamime, Esq.
March 26, 1974	Toronto	Neighbourhood Legal Services Speakers: A. McChesney, Esq., Solicitor D. Reville, Esq. Canadian Environmental Law Association Speaker: Clifford Lax, Esq., Solicitor Young Progressive Conservative Assoc. Speaker: David Low, Esq. Community Legal Aid Services Programme Osgoode Hall Law School Speaker: William Horton, Esq. Co-Chairman Stanley Gershamn, Esq., Solicitor Seneca College Legal Administration Course

DATE	LOCATION	NAME
March 27, 1974	Toronto	Parkdale Community Legal Services Speakers: Miss Bevan Mrs. Elizabeth Trottia Member of Board of Directors Miss G. Rubenstein Miss Doris Theriault Mrs. Margaret Whitlock Martin Amber, Esq. Professor A. Grant Chairman, The Clinical Training Committee Osgoode Hall Law School Charles C. Roach, Esq., Solicitor Elwyn E. Rogers, Esq.
April 1, 1974	Sudbury	R. J. Huneault, Esq. Legal Aid Area Director Manitoulin and Sudbury District P. J. Burns, Esq., Q.C. Legal Aid Area Director Temiskaming District
April 2, 1974	Sudbury	Professor Raoul Benais Mrs. B. Carbone United Steelworkers of America Speaker: G. H. Gilchrist Area Supervisor
April 3, 1974	London	Sarnia Anti-Poverty Coalition and P.U.S.H. Speaker: Ms. Amy Norland Chairman University of Western Ontario Legal Aid Society Speaker: Alan W. Bryant, Esq. Director

DATE	LOCATION	NAME
April 3, 1974	London	Association of Iroquois and Allied Indians Speaker: L. R. Hopkins, Esq. President
		Miss Inez Smith
		Mrs. Gretta Grant, Q.C. Legal Aid Area Director Middlesex County
		Provincial Council of Women of Ontario Speaker: Mrs. Ruth Jarmain Officer
		M. Burgard, Esq., Solicitor
		Fanshawe College of Applied Arts London Legal Office and Administration Programme Speaker: John Velanoff, Esq. Co-ordinator
		R. F. Cline, Esq. Deputy Legal Aid Area Director Elgin County
April 4, 1974	London	Students Legal Aid Society University of Western Ontario Speakers: Ms. Fran Kiteley Ms. Marg Koenigsberg
		Gillette Wigano, Esq.
		Ms. Gail Doxator, Native Courtworker
		Mrs. Jane Muldoon
April 8, 1974	Ottawa	Albert J. Roy, Esq., M.P.P. Ottawa East
		Victor J. P. Charbonneau, Esq.

DATE	LOCATION	NAME
April 8, 1974	Ottawa	Students Legal Aid Society University of Ottawa Speakers: Professor Bruce Arlidge Faculty Director Dean Albert Hubbard C. Hackland, Esq. Brian Casey, Past Chairman Preventative Law Program Grant Jameson, Esq.
		French Canadian Association of Ontario Speaker: Remy Beauregard, Esq.
April 9, 1974	Ottawa	Glen Kealey, Esq., Solicitor
		Childrens' Aid Society of Ottawa Speaker: Joseph Messner, Esq. Director
		Harold Tyo, Esq.
		Mrs. Rose Rupert
		Mrs. Juliet Cameron
April 10, 1974	Kingston	Students Legal Aid Society Queen's University Speakers: Professor Lyman Robinson Professor J. M. Johnson L. A. Pick, Esq., Chairman The Student Legal Aid Committee
		Richard Williams, Esq. Teacher, Loyola College of Applied Arts and Technology
		Mrs. Robin Campsall
		Edward P. A. Lang, Esq.
		Professor Ronald Price Queen's University
		Thomas Wakeling, Esq.
		Don Bearss, Esq. Administrator, Family Court

DATE	LOCATION	NAME
April 16, 1974	Hamilton	Judge David Steinberg Provincial Court (Family Division) Hamilton Status of Women Committee Speaker: Miss Olive Ritchie Hamilton Bar Association Speakers: Morris Perozak, Esq., Q.C. William Morris, Esq., Q.C. John Evans, Jr. Esq., Solicitor J. D. Thoman, Esq., Solicitor W. T. Stayshyn, Esq., Solicitor John Howard Society of Hamilton Speakers: David Kennedy, Esq. G. Ward, Esq. Miss Sheila Fraser Herman Turkstra, Esq., Solicitor
April 17, 1974	Hamilton	Family Services of Hamilton-Wentworth Inc. Speakers: Mrs. E. Jackson Leon Price, Esq., Solicitor Mrs. Gue G. S. Paknis, Esq. North End Residents' Organization Speaker: Ms. Alice Lupton Project Manager Hugh F. McKerracher, Esq., Q.C. Mrs. Jill Simmonds Mississaugas of the New Credit Council Speakers: Councillor Clayton Tobicoe Chief W. G. King Mrs. Rose Armstrong

DATE	LOCATION	NAME
April 17, 1974	Hamilton	Matthew Hawthorne, Esq. Speakers: N. B. Lowe, Deputy Legal Aid Area Director, Wentworth County W. T. Stayshyn, Esq., Solicitor E. Brink, Esq. Victoria Park Community Organization Speakers: Gary Quart, Esq. John Morris, Esq. The Social Planning and Research Council of Hamilton Speakers: Edward J. Pennington, Esq. Executive Director Robert Arnold, Esq. Research Associate Miss Delores Marks Durand Neighbourhood Association Speaker: Mrs. M. Beatty Mrs. Helen Reinke
April 18, 1974	Windsor	Legal Assistance of Windsor University of Windsor Law School Speakers: R. McDowell, Esq. Professor R. Ianni Professor John McLaren Joe Bergman, Esq. J. Martin, Esq. Professor N. Gold Miss D. Knight Executive Director of the Senior Citizens' Centre The Women's Place Speaker: Ms. Beverly Walker The John Howard Society of Windsor Speaker: Chris Levy, Esq.

DATE	LOCATION	NAME
		Ontario Association of Chiefs of Police Speakers: R. F. Cook Chief of Police, Sarnia G. Preston Chief of Police, Windsor
April 18, 1974	Windsor	University of Windsor Faculty of Law Speaker: Dean J. C. Patterson
April 23, 1974	Thunder Bay	Lee Baig, Esq., Solicitor
		Lakehead Social Planning Council Speakers: Robert Stiven, Esq. Miss M. Phillips
		Mothers on Budgets Speaker: Miss Leona Cosgrove
		Lakehead and District Credit Union Chapter Speaker: Peter Holt, Esq.
		Indian Friendship Centre Speaker: Xavier Michon, Esq., Director and President, Ontario Federation of Indian Friendship Centres Miss Marlene Pierre Vice-President, Thunder Bay Indian Friendship Centre
April 24, 1974	Thunder Bay	Armstrong Indian & Metis Association Speaker: Hector King, Esq.
		Ontario Federation of Indian Friendship Centres Speaker: Xavier Michon, Esq., President
		Chief Louis Peltier Ojibway Bank in Thunder Bay
		Judge W. W. Creighton Provincial Court (Family Division)

DATE	LOCATION	NAME
April 24, 1974	Kenora	Big Island Band Speakers: Chief Willie Big George Chief Sam Copenace, Band 37
April 24, 1974	Kenora	District Inter Agency Committee of Red Lake - Speakers: A. E. Johanson, Esq., Director Dale Toms, Esq. Assessment Officer Jack Doner, Esq., Solicitor Legal Aid Area Director Lawrence Crawford, Esq. Ministry of Community and Social Services Mrs. Joyce Warttig Secretary to J. Doner, Esq.,
April 25, 1974	Kenora	Kenora Law Association Speaker: John McIsaac, Esq., Solicitor Kenora Social Planning Council Speaker: Cuyler Cotton, Esq. Ms. Nancy Morrison, Native Observer Ms. Kitty Everson Native Courtworker Grand Council Treaty No. 3 Speakers: Robert Major, Esq. Peter Kelly, Esq.
April 29, 1974	Toronto	The Law Society of Upper Canada Speakers: S. L. Robins, Esq., Q.C. Treasurer John Bowlby, Esq., Q.C. Chairman, Legal Aid Committee P. Fitzgerald, Esq., Q.C. Vice-Chairman, Legal Aid Committee The Law Union Speaker: Paul Copeland, Esq., Solicitor

DATE	LOCATION	NAME
April 30, 1974	Toronto	Judge Douglas Bice Provincial Court (Criminal Division)
April 30, 1974	Toronto	Ministry of Community and Social Services Speaker: H. R. Dignam, Esq. Director of Legal Aid Secretariat Parkdale Community Legal Services Speakers: Professor F. Zemans Ms. Mary Hogan, Solicitor Harvin D. Pitch, Esq., Solicitor John A. Kazanjian, Esq.
May 1, 1974	Toronto	Canadian Civil Liberties Association Speakers: J. S. Midanik, Esq., Q.C. A. A. Borovoy, Esq., Solicitor Robert Cooper, Esq. Ms. Tuula Jacobson Social Planning Council of Toronto Speakers: R. Schachter, Esq., Solicitor K. Danson, Esq., Solicitor D. Wood, Esq., Solicitor Ms. Anella Parker
May 23, 1974	Toronto	Professor Jacob Ziegel Professor Michael Trebilcock The John Howard Society of Metropolitan Toronto Speakers: C. Lacatus, Esq. J. Marler, Esq., Solicitor
May 24, 1974	Toronto	Childrens' Aid Society for Wellington County Speaker: R. Parker, Esq., M.S.W. The County of York Law Association Speakers: J. Jennings, Esq., Solicitor H. Locke, Esq., Q.C. S. World, Esq., Q.C.

DATE	LOCATION	NAME
May 24, 1974	Toronto	Ontario Labour Relations Board Speaker: G. W. Reed, Esq., Q.C. Chairman Toronto and District Labour Council Speaker: Donald Montgomery, Esq., Chairman The Advocates' Society Speaker: Robert Montgomery, Esq., Q.C.

APPENDIX D

MEETINGS

January 23, 1974	Toronto	Briefing of members by Andrew Lawson, Q.C., Director of Legal Aid and members of his staff upon the present Legal Aid Plan.
January 28, 1974	Toronto	Briefing of members by the Legal Aid Committee of The Law Society of Upper Canada.
January 28, 1974	Sudbury	Attendance by Chairman with the Review Committee, members of the Area Committee, Area Director and the Advisory Committee of the Attorney General.
February 5, 1974	Toronto	Briefing of members concerning native peoples by Messrs. Jack Doner and Professor Harvey Savage.
February 6-7, 1974	Montreal	Briefing of members on Quebec Legal Aid programme with the Legal Aid Services Commission, Montreal Regional Corporation and the Hochelaga-Maisonneuve Bureau.
February 11, 1974	Sarnia	Attendance by Chairman with Area Director Mr. R. F. Wyrzykowski and members of the Area Committee.
February 12, 1974	Toronto	Attendance by some members at Parkdale Community Services Clinic.
March 21-22, 1974	Winnipeg	Meetings by some members with Personnel of Legal Aid Programme of Manitoba and attendance at Neighbourhood Law Offices.
March 27, 1974	Toronto	Meeting of members with Legal Aid Advisory Committee of the Attorney General.
April 1, 1974	Sudbury	Meeting of members with local Judges.
April 1, 1974	Sudbury	Meeting of members with local Area Directors and members of Area Committees.

April 3, 1974	London	Meeting of members with local Judges.
April 3, 1974	London	Meeting of members with local Area Directors and members of Area Committees.
April 8, 1974	Ottawa	Meeting of members with local Judges.
April 8, 1974	Ottawa	Meeting of members with local Area Directors and members of Area Committees.
April 9, 1974	Kingston	Meeting of members with local Area Directors and members of Area Committees.
April 10, 1974	Kingston	Meeting of members with local Judges.
April 16, 1974	Hamilton	Meeting of members with local Judges.
April 16, 1974	Hamilton	Meeting of members with local Area Directors and members of Area Committees.
April 23, 1974	Thunder Bay	Meeting of members with local Area Directors, members of Area Committees and some members of local County Law Association.
April 23, 1974	Thunder Bay	Meeting of members with local Judges.
April 24, 1974	Kenora	Meeting of members with local Judges.
May 7, 1974	Edinburgh, Scotland	Meeting of some members with Secretary of Law Society of Scotland.
May 13-17, 1974	New York	Meeting of Mrs. Ann Scace with Legal Aid officials of New York.
May 14, 1974	London England	Meeting of some members with A. F. Seton Pollock, Legal Aid Secretary for the Law Society, and Derek Oulton, Lord Chancellor's Representative on the Legal Aid Committee

May 22, 1974	Windsor	Meetings of some members with Area Director, members of Legal Aid Committee and representatives of the County Law Association.
May 30, 1974 June 1, 1974	Levis, Quebec	Meeting of members with Conference of the Canadian Council on Social Development.

APPENDIX E

WRITTEN MATERIALS CONSIDERED

Action Needed on Prepaid Legal Services, Editorial, New York Law Journal, January 30, 1974.

Annual Reports, Ontario Legal Aid Plan, The Law Society of Upper Canada.

Annual Reports, The Attorney General of Ontario's Advisory Committee

Case for Judicare (The), American Bar Association Journal, December 1973, Samuel J. Brakel, Esq.

Consumer Litigation in the Small Claims Court of Metropolitan Toronto, An Empirical Analysis, April 1974, Larry H. Moldaver, Esq., Jerry Herlihy, Esq., Osgoode Hall Law School, York University.

Correctional Law & Legal Assistance Project, General Instructions, September 19, 1973, Professor Ronald Price, Faculty of Law, Queens University.

Correctional Law & Legal Assistance Seminar—Summary of Proposal, Professor Ronald Price, Faculty of Law, Queens University.

Counsel, Clients and Community, Osgoode Hall Law Journal, December 1973, Dean H. W. Arthurs, Osgoode Hall Law School, York University.

Delivery of Legal/Para-legal Services to Native Populations in Remote Areas: Law & Executive Director, Dalhousie Legal Aid Service, Dalhousie University.

Divorce Pilot Project—Interim Report, December 27, 1972, James B. Chadwick, Esq., Q.C., Area Director, Ontario Legal Aid Plan.

Facts about the Correctional Investigator, Canada, The Honourable Warren Allmand, Solicitor General.

Failure of Legal Services Or Let Them Clean Out Cellars, Harry P. Stumpf, Esq., Conference on the Delivery and Distribution of Legal Services, State University of New York, Buffalo Law School, October 11-12, 1973.

Financial Statements & Report on the Audit for the year ended March 31, 1973, Legal Aid Fund, The Law Society of Upper Canada.

Impact of Legal Aid on the Courts (The), Extract from Report on Administration of Ontario Courts, Ontario Law Reform Commission 1973, Ministry of the Attorney General.

Interest on Trust Accounts, Sydney L. Robins Esq., Treasurer, The Law Society of Upper Canada.

Judicare, Public Funds, Private Lawyers & Poor People, 1974, Samuel J. Brakel, Esq., American Bar Foundation.

Law Foundation of Ontario—Charter, (Bill 104), By-Laws, Minutes, The Law Foundation of Ontario.

Legal Aid Act—Revised Statutes of Ontario, 1970, Chapter 239 as amended and Regulation 557 — Revised Regulation of Ontario, 1970 as amended by O. Regulation 224/72, August 1972.

Legal Aid Assessment Manual, Ministry of Community & Social Services.

Legal Aid in Europe: A Turmoil, Professor Mauro Cappelletti, American Bar Association Journal, February 1974, Volume 60.

Legal Studies for Native People. Roger Carter, Esq., Faculty of Law, University of Saskatchewan.

Lower Town East Pilot Project, "Legal Aid and the Chronic Poor" April 1, 1971, to June 30, 1971, James B. Chadwick, Esq., Q.C., Area Director, Ontario Legal Aid Plan.

Memorandum Respecting Legal Aid in matters Related to the Criminal Law, March 15, 1973, The Honourable Otto Lang, Attorney General of Canada.

Minutes of meetings of Boards of Governors of Parkdale Community Legal Services, February 13, 1974, February 27, 1974.

Native Court Counselling Service in Ontario, Ontario Federation of Indian Friendship Centres.

New Fringe Benefit: Prepaid Legal Service, Business Week, January 12, 1974.

Newsletter, May 1974, John Howard Society of Ontario.

Ontario Legal Aid Plan and Legal Aid Committee of The Law Society of Upper Canada Materials:

(1) Advertising — Public Relations — Legal Aid Education
(2) Area Committees
(3) Area Director's Handbook July 1969 & Memoranda Subsequent to July 1969
(4) Collection of Client Contribution and Costs Awarded
(5) Data Processing — Statistical Master File, April 8, 1971
(6) Decentralization of York County
(7) Delivery of Legal Services in Northern Ontario
(8) Draft Recommendation of Sub-Committee with Respect to Divorce Pilot Project at Ottawa, Legal Aid Committee, Gordon P. Kileen, Esq., Q.C.
(9) Group Applications
(10) Hamilton Pilot Project
(11) Legal Advice & Assistance Programme
(12) Legal Aid Tariffs
(13) Non-Disclosure of Information
(14) Paper Flow Under Legal Aid
(15) Part VII of the Regulations — Payment of Costs

(16) Problems of Financial Assessment of a Legal Aid Applicant
(17) Provisional Memorandum on the Juvenile Court of the Juvenile and Family Court in Metropolitan Toronto — prepared for Duty Counsel in the York Area, Ontario Legal Aid Plan — December 1, 1967
(18) Psychiatric Hospital Patients' Welfare Association — Report & Supplementary Report of Sub-Committee to the Legal Aid Committee, April 1973
(19) Regionalization
(20) Report of the sub-committee of the Legal Aid Committee on Group Applications
(21) Report of the Sub-committee Concerning Issuance of Civil Certificates & Opinion Letters (Section 58 of the Regulation)
(22) Selection of a Lawyer by a Legal Aid Client
(23) Statistics Re-Activity — York Area Legal Aid Office, November 23, 1973 — February 15, 1974, W. Reid Donkin, Esq., Q.C., Area Director York County Legal Aid
(24) Sub-committee on Community Legal Services in Ontario Supplementary Report on "AID to Persons in Remote Areas of the Province and in Particular the Indian and Eskimo Population of Northern Ontario."
(25) Summary of procedures used in Collecting Overdue Accounts
(26) The Role of Duty Counsel
(27) Working Relationship Between The Law Society and the Provincial Government

Pamphlets Prepared as Part of the University of Ottawa Student Legal Aid Society's Preventative Programme.

Peterborough Project — Suggested Financial Criteria, Lyle S. Fairbairn, Esq., Q.C., Assistant Provincial Director Ontario Legal Aid Plan.

Poverty Law — Representing the Poor: Developments in America, Daniel Segal, Esq.

Prepaid Group Legal Services — Where We Are, Edwin L. Gasperini, Esq., Max Schorr, Esq., New York State Bar Journal, February, 1973.

Prepaid Legal Services—For Whose Benefit—Annual Meeting, New York State Bar Association, New York City, January 25, 1974, Senator John R. Dunne, Chairman, New York Select Committee on Insurance.

Prepaid Legal Services Support Mounting, March 1974, Volume 3. No. 4 Ontario Bar News.

Progress Report — May 14, 1974, Denis V. Burnett, Esq., Treasurer, The Law Foundation of Ontario.

Proposed Monroe Prepaid Legal Services Plan (The), Donald R. Adair, Esq., New York State Bar Journal, June 1973.

Report of the Ontario Legal Insurance Survey, 1973, Sheldon Cherner, Esq. Abe Greenspan, Esq., John Guoba, Esq., Ms. Barbara Mauro, Michael Schoenborn, Esq., Ms. Catherine Thorpe.

Report of the University of Ottawa (The), Legal Aid Planning Committee, September, 1971, J. Rogers, Esq.

Resolution in Support of Proposed State Legislation Relating to Legal Services Insurance, New York State Bar Association, January 24, 1974, Special Committee on Availability of Legal Services.

Statement of Irwin Goldbloom, Acting Deputy Assistant Attorney General Civil Division on H.R. 6667 Bureaucratic Accountability Act of 1973, Before the Subcommittee on Crime Committee on the Judiciary, House of Representatives.

Statistical Report on Services Operation — Correctional Law & Legal Assistance Project, Faculty of Law, Queen's University.

Student Legal Aid Manual — Seventh Edition Community & Legal Aid Services Programme, Editor: Ms. Paula Knopf.

ALBERTA

Annual Report, 1974, Legal Aid Society of Alberta

BRITISH COLUMBIA

Annual Reports, 1972, 1973 & 1974, The Law Foundation of British Columbia

Financial Statements April 30, 1972 & 1973, The Law Foundation of British Columbia

Information on Native Courtworker Programme. "What is the Need for an Indian Courtworker System?", Wilbur Campbell, Esq., Chief Administrative Officer, Native Courtworkers and Counselling Association of British Columbia

Memorandum Concerning Administration of The Law Foundation of British Columbia, June 29, 1972

Minutes of the Meeting of Board of Governors of The Law Foundation May 28, 1973

Pamphlet – Native Courtworker & Counselling Association of British Columbia

Submissions to Mr. Harper, Chairman of The Law Foundation of Vancouver, 1972

MANITOBA

Information on the Administration of Justice to Grand Rapids, Norway House, Cross Lake, Oxford House and Easterville, R. J. Meyers, Esq., Executive Director, Legal Aid Manitoba

Legal Aid in Manitoba: Past, Present, and Future, Board of Directors of the Legal Aid Services Society of Manitoba

Legal Aid Services Society of Manitoba Act, Statutes of Manitoba 1971 Chapter L105, Manitoba Regulation No. 106/72

Memo to lawyers serving with the Grand Rapids & Norway House Legal Aid Panel, Legal Aid Services Society of Manitoba

Report of the Fact Finding Committee of Legal Aid, Department of the Attorney General 1970

NEW BRUNSWICK

Annual Report, 1972 – 1973, Barristers' Society of New Brunswick

Legal Aid Act and Regulations as amended, Province of New Brunswick

NOVA SCOTIA

Annual Report, Dalhousie Legal Aid Service, 1973

Legal Paraprofessional in Canada, A Pilot Training Scheme, Dalhousie Legal Aid Service

Paralegal Training Programme, Dalhousie Legal Aid Service

PRINCE EDWARD ISLAND

Legal Aid Act, Prince Edward Island Legislative Assembly

QUEBEC

Conference on Legal Aid, Levis, Quebec, Canadian Council on Social Development, Background Papers, May 30, to June 1, 1974

Legal Aid Act and Regulations as Amended, National Assembly of Quebec

ENGLAND

An Address to Area Directors, Ontario Legal Aid Plan at Osgoode Hall A. F. Seton Pollock, Esq., September 1972

Guide to New Legal Aid 1974, The Law Society & The Central Office of Information 1974

Legal Aid Act 1974

Legal Aid and Advice – Reports of The Law Society & Comments & Recommendations of the Lord Chancellor's Advisory Committee

1970 – 71 (Twenty-First Report)
1971 – 72 (Twenty-Second Report)
1972 – 73 (Twenty-Third Report)

Legal Aid in Criminal Proceedings, Memorandum of the Council of The Law Society, July 1973

Legal Aid in Tribunals, Memorandum of the Council of The Law Society

Legal Advice and Assistance, The New Deal, A. F. Seton Pollock, Esq.

New Legal Aid – How It Can Help You, 1974 (Pamphlet & Newspaper ad.)

Parliamentary Debates (Hansard) House of Lords, Official Report Tuesday, May 14, 1974

GERMANY

Materials on the German Legal Aid Program

SCOTLAND

An Introduction to the Legal Advice and Assistance Scheme

Compendium of Legal Aid, W. Green & Son, Reprinted from the Parliament House Book, 1974

Forms from The Law Society of Scotland

Guide to Legal Aid in Scotland

Legal Aid Scheme–Twenty-First & Twenty-Second Report of The Law Society of Scotland, Scottish Home and Health Department